

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

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*

**STATEMENT OF CLAIM
(Notice of Action Issued February 9, 2022)**

I. DEFINITIONS

1. In this 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, as of May 10, 2014;
 - (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 mine;
 - (g) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
 - (h) “**CSA**” means the Canadian Securities Administrators;
 - (i) “**Defendants**” means, collectively, Gatos, Orr, Johnson, Pyle, Tetra Tech, the Electrum Defendants, the Individual Authors, and the Underwriters;
 - (j) “**Dowa**” means Dowa Metals & Mining Company, Limited;
 - (k) “**EDGAR**” means the Electronic Data Gathering, Analysis and Retrieval System;
 - (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; 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) **“GAAP”** means United States generally accepted accounting principles;
- (t) **“Gatos”** means the Defendant Gatos Silver, Inc., including, where the context requires, its corporate predecessors;
- (u) **“ICFR”** means Internal Controls over Financial Reporting, as defined in section 1.1 of NI 52-109;
- (v) **“Impugned AIF”** means Gatos’s AIF for the fiscal year ended December 31, 2020 (filed on SEDAR on March 29, 2021);

- (w) **“Impugned Documents”** means Gatos’s:
 - (i) Impugned Financial Statements;
 - (ii) Impugned MD&As;
 - (iii) Impugned Prospectuses; and
 - (iv) Impugned AIF;
- (x) **“Impugned Financial Statements”** means the Q3 2020 Financial Statements, FY 2020 Financial Statements, Q1 2021 Financial Statements, Q2 2021 Financial Statements, and Q3 2021 Financial Statements;
- (y) **“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;
- (z) **“Impugned Prospectuses”** means the IPO Prospectus and the Second Prospectus;
- (aa) **“Individual Authors”** means the Defendants Guillermo Dante Ramírez-Rodríguez and Kira Lyn Johnson;
- (bb) **“IPO”** means Gatos’s initial public offering of common shares pursuant to the IPO Prospectus;
- (cc) **“IPO Prospectus”** means the Base Prep Prospectus dated October 27, 2020 and the Supplemented Prep Prospectus dated October 29, 2020;
- (dd) **“Johnson”** means the Defendant, Roger Johnson;
- (ee) **“LGJV”** means the Los Gatos Joint Venture;
- (ff) **“MD&A”** means Management’s Discussion and Analysis;

- (gg) “**Mineral Reserve(s)**” has the meaning given to that term in the CIM Definition Standards;
- (hh) “**Mineral Resource(s)**” has the meaning given to that term in the CIM Definition Standards;
- (ii) “**NI 43-101**” means the CSA’s National Instrument 43-101 – *Standards of Disclosure for Mineral Projects*, as amended;
- (jj) “**NI 52-109**” means the CSA’s National Instrument 52-109 – *Certification of Disclosure in Issuers’ Annual and Interim Filings*, as amended;
- (kk) “**NYSE**” means the New York Stock Exchange;
- (ll) “**OSA**” means the *Securities Act*, RSO 1990, c S.5, as amended;
- (mm) “**Offerings**” means, collectively, the IPO and the Second Offering;
- (nn) “**Omitted Material Facts**” are the material facts that (i) the Technical Report contained errors and was unreliable; and (ii) the CLG Mineral Reserve and Mineral Resource estimates were overstated, invalid and/or unreliable, both as at the date of their creation and throughout the Class Period;
- (oo) “**Orr**” means the Defendant, Stephen Orr;
- (pp) “**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;

- (qq) **“Plaintiff”** means the Plaintiff, Izabela Przybylska;
- (rr) **“Prospectus Purchaser Class Members”** means Class Members who purchased Gatos securities under the Impugned Prospectuses and in the distributions to which they related;
- (ss) **“Pyle”** means the Defendant, Philip Pyle;
- (tt) **“Q1 2021 MD&A”** means Gatos’s MD&A for the quarter ended March 31, 2021 (filed on SEDAR on May 7, 2021);
- (uu) **“Q1 2021 Financial Statements”** means Gatos’s financial statements for the quarter ended March 31, 2021 (filed on SEDAR on May 7, 2021);
- (vv) **“Q2 2021 MD&A”** means Gatos’s MD&A for the quarter ended June 30, 2021 (filed on SEDAR on August 9, 2021);
- (ww) **“Q2 2021 Financial Statements”** means Gatos’s financial statements for the quarter ended June 30, 2021 (filed on SEDAR on August 9, 2021);
- (xx) **“Q3 2020 MD&A”** means Gatos’s MD&A for the quarter ended September 30, 2020 (filed on SEDAR on December 8, 2020);
- (yy) **“Q3 2020 Financial Statements”** means Gatos’s financial statements for the quarter ended September 30, 2020 (filed on SEDAR on December 8, 2020);

- (zz) “**Q3 2021 MD&A**” means Gatos’s MD&A for the quarter ended September 30, 2021 (filed on SEDAR on November 8, 2021);
- (aaa) “**Q3 2021 Financial Statements**” means Gatos’s financial statements for the quarter ended September 30, 2021 (filed on SEDAR on November 8, 2021);
- (bbb) “**QP Certificate**” means a Certificate of Qualified Person under Part 8, section 8.1 of NI 43-101;
- (ccc) “**QP Consent**” means a Consent of Qualified Person under Part 8, section 8.3 of NI 43-101;
- (ddd) “**Qualified Person**” has the meaning given to that term in NI 43-101;
- (eee) “**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.
- (fff) “**Second Offering**” means the offering of Gatos securities pursuant to the Second Prospectus;
- (ggg) “**Second Prospectus**” means the Short Form Base Shelf Prospectus dated July 12, 2021 and the Prospectus Supplement dated July 15, 2021;
- (hhh) “**Secondary Market Class Members**” means Class Members who acquired Gatos securities in the secondary market;
- (iii) “**SEDAR**” means the system for electronic document analysis and retrieval of the CSA;
- (jjj) “**Tetra Tech**” means the Defendant, Tetra Tech, Inc.;

- (kkk) “**Technical Report**” means the technical report titled “Los Gatos Project, Chihuahua, Mexico”, prepared by Tetra Tech with an effective date of July 1, 2020;
- (lll) “**TSX**” means the Toronto Stock Exchange; and
- (mmm) “**Underwriters**” means the Defendants, 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) a declaration that the Underwriters are vicariously liable for the acts and/or omissions of their respective officers, directors or employees;
- (i) general and special damages in an amount to be determined including, if the court determines it is just and appropriate, aggregate damages;
- (j) 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;
- (k) a monetary award, constructive trust, accounting or such other remedy as restitution for the unjust enrichment of Gatos, the Underwriters, ESUS and ESUS II;
- (l) an order directing a reference or giving such other directions as may be necessary to determine the issues, if any, not determined at the trial of the common issues;
- (m) prejudgment and post judgment interest;
- (n) 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
- (o) such further and other relief as this Honourable Court may deem just.

III. OVERVIEW

2. Gatos is a US-based silver-dominant mining company. Its flagship asset is the Cerro Los Gatos mine (defined herein as CLG), a polymetallic mine and processing facility in the Los Gatos District of northwestern Mexico.
3. Gatos conducted its IPO in October 2020, with its shares commencing 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.
4. There was broad global investor participation in the IPO, and CLG's Mineral Reserves and Mineral Resources were of central importance to Gatos's offering. These characteristics—taken, in part, from the Technical Report purportedly created pursuant to NI 43-101 and authored by Tetra Tech—presented CLG as a high-quality, long-life asset. Throughout the Class Period, Gatos periodically released documents touting these facts, including summaries and estimates of the Mineral Reserves and Mineral Resources at CLG.
5. On January 25, 2022—the last day of the Class Period—Gatos revealed that these representations were false. In a news release, the Company revealed that there were errors in the Technical Report and an overestimation in CLG's resource model, and that the Technical Report could no longer be relied upon. As is particularized below, the market value of Gatos's securities on the TSX and NYSE plummeted immediately. Within 24 hours, Gatos's share price had fallen by almost 70%.

6. The Plaintiff alleges that the Impugned Documents contained misrepresentations by failing to state the Omitted Material Facts, namely that (i) the Technical Report contained errors and was unreliable; and (ii) the CLG Mineral Reserve and Mineral Resource estimates were overstated, invalid and/or unreliable, both as at the date of their creation and throughout the Class Period. The Plaintiff alleges that these facts were material facts that Gatos was required to state and/or were necessary to make statements in the Impugned Documents regarding CLG not misleading in the light of the circumstances in which those statements were made.
7. The failure to state these material facts 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.
8. 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

9. 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

10. Gatos is a company incorporated in Delaware, United States, and headquartered in Greenwood Village, Colorado. Gatos 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 the IPO.
11. 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. Gatos is 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.
12. In 2015, Gatos entered the LGJV to develop the Los Gatos District with Dowa. The LGJV completed an advanced definitional drilling and decline development program at CLG in 2016, a feasibility study in January 2017, and a Mineral Resource update in September 2019. On September 1, 2019, the LGJV commenced commercial production at CLG.
13. In July 2020, the LGJV completed a technical update to the 2017 feasibility study in the form of the Technical Report. The Technical Report contained a Mineral Reserve estimate for CLG, calculated from the mine plan created from the September 2019 Mineral Resource update.

Orr

14. 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

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

Pyle

16. 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

17. Tetra Tech is a global provider of consulting and engineering services with principal executive offices in Pasadena, California. Tetra Tech prepared the Technical Report.
18. Each of the Individual Authors is a Qualified Person and an employee of Tetra Tech who authored, in material respects, the Technical Report. More particularly:
 - (a) Guillermo Dante Ramírez-Rodríguez is a Principal Mining Engineer at Tetra Tech who authored 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. She authored section 14 (Mineral Resource Estimates) of the Technical Report, as well as portions of other sections.

The Electrum Defendants

19. 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.

20. 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.
21. 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).

Underwriters

22. The Underwriters are Canadian financial institutions who served as underwriters in the Offerings.
23. BMO Nesbitt Burns Inc. is a full-service financial services provider, and a member of the BMO Financial Group. It is affiliated with BMO Capital Markets Corporation.
24. Goldman Sachs Canada Inc. is the Canadian affiliate of the Goldman Sachs Group, Inc., an American multinational investment bank and financial services company. It is affiliated with Goldman Sachs & Co. LLC.

25. RBC Dominion Securities Inc. is a full-service investment management firm and is affiliated with the Royal Bank of Canada and RBC Capital Markets, LLC.
26. Canaccord Genuity Corp. is an investment banking and financial services company and is affiliated with Canaccord Genuity LLC.
27. CIBC World Markets Inc. is the investment banking subsidiary of the Canadian Imperial Bank of Commerce. It is affiliated with CIBC World Markets Corp.
28. In the United States, the Offerings were underwritten by BMO Capital Markets Corp., Goldman Sachs & Co. LLC, RBC Capital Markets, LLC, CIBC World Markets Corp. and Canaccord Genuity LLC (collectively, the “US Underwriters”).
29. In connection with the distributions conducted pursuant to the IPO, the Underwriters and the US Underwriters were paid approximately US\$12.1 million, collectively, in underwriting discounts or commissions.
30. In connection with the distributions conducted pursuant to the Second Offering, the Underwriters and the US Underwriters were paid approximately US\$6.5 million, collectively, in underwriting discounts or commissions.

V. THE OFFERINGS

31. 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.
32. 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.
33. 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.
34. 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.
35. 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.
36. In the IPO, Orr, Johnson, the Electrum Group, ESUS and the Underwriters 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, the Electrum Group and ESUS did so by signing the Certificate of the Promoters, and the Underwriters did so by signing the Certificate of the Canadian Underwriters.
37. In the Second Offering, Orr, Johnson, the Electrum Group, ESUS, ESUS II and the Underwriters 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, the Underwriters did so by signing the Certificate of the Canadian Underwriters, and ESUS and ESUS II did so by signing the Certificate of the Selling Securityholders.

38. 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.
39. 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.
40. 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.
41. 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.

42. In connection with 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."
43. 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.
44. Each of the Individual Authors signed consents on October 27, 2020 in connection with the IPO Prospectus.

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

45. Gatos was required to fulfil disclosure requirements on a continuing basis in order 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.
46. 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.

47. 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.
48. 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.
49. 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 that:
- (a) 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;
 - (b) such documents fairly presented in all material respects the financial condition, financial performance, and cash flows of Gatos;
 - (c) they were responsible for establishing and maintaining Gatos's disclosure controls and procedures as well as Gatos's ICFR;
 - (d) they had designed the disclosure controls and procedures, or caused them to be designed under their supervision, to provide reasonable assurance that material

information relating to Gatos was made known to them by others, particularly during the period in which the documents were being prepared;

- (e) they had designed the ICFR, or caused the ICFR to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP;
- (f) in respect of Gatos's annual filings, they had evaluated, or caused to be evaluated under their supervision, the effectiveness of Gatos's disclosure controls and procedures and ICFR at the financial year end and had disclosed in Gatos's annual MD&A their conclusions about the effectiveness of Gatos's controls.

50. These certifications were false and were themselves misrepresentations. By signing the Impugned Prospectuses and certifying the Impugned Documents that were Gatos's financial statements, MD&A and AIF, Orr and Johnson authorized, permitted or acquiesced to their release.

51. 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.

VII. DISCLOSURE ABOUT MINERAL PROJECTS

52. The OSA and the Other Securities Legislation regulate the disclosure of information related to mineral projects. The disclosure standards in NI 43-101 arose out of incidents relating to the securities of mineral exploration and mining companies regulated by Canadian securities administrators. Among other things, NI 43-101 sets standards for defining the

key attributes of mineral properties, and for the inclusion of data in a technical report. Because a positive feasibility study or prefeasibility study lends enormous legitimacy to a mining project, it is important that the data used in such a study is a correct reflection of the true and correct nature of the mineral deposit. Pursuant to Part 6 of NI 43-101, a technical report must be based on all available data relevant to the disclosure it supports.

53. NI 43-101 requires mining companies to report the potential mineralization of a property by making approximate calculations of the quantity and quality of a mineral deposit, as extrapolated from collected data and samples. Such estimates are prepared on a sliding scale using two classifications (Mineral Resource estimates and Mineral Reserve estimates) with five categories of an increasing level of geological evidence and confidence.
54. The Mineral Resource estimate categories are:
 - (a) an Inferred Mineral Resource, which is an estimate based on “limited geological evidence and sampling”, sufficient to “imply but not verify geological and grade or quality continuity”;
 - (b) an Indicated Mineral Resource, which is an estimate based on “detailed and reliable exploration, sampling and testing” sufficient to “assume geological and grade or quality continuity between points of observation”; and
 - (c) a Measured Mineral Resource, which is an estimate based on “detailed and reliable exploration, sampling and testing” sufficient to “confirm geological and grade or quality continuity between points of observation”.
55. Only when that work is complete can a reporting issuer then proceed to report the economic

viability and, by extension, the life of a project through a Mineral Reserve estimate. A Mineral Reserve estimate classifies the economically recoverable part of a deposit by modelling only the Measured or Indicated Mineral Resource estimate. In doing so, the estimator must make reasonable assumptions of, among other considerations, the technical, engineering, operating and economic circumstances of the mining project. The intent is to optimize the recoverable tonnage by eliminating uneconomic mineralization. This is done through the imposition of specific economic constraints on the size and grade of the deposit.

56. The Mineral Reserve estimate categories are:

- (a) a Probable Mineral Reserve, which is the economically mineable part of an Indicated and, in some circumstances, a Measured Mineral Resource estimate, demonstrated by at least a preliminary feasibility study.
- (b) a Proven Mineral Reserve, which is the economically mineable part of a Measured Mineral Resource estimate, demonstrated by at least a preliminary feasibility study. Application of this category implies that the estimator has the highest degree of confidence in the estimate with the consequent expectation in the minds of readers.

57. As a mineral project develops from initial exploration through detailed investigation to the stage where economic viability is to be determined, the amount of data increases, and there is a need for greater confidence therein. When economic viability is determined, accuracy of basic data becomes critical.

VIII. THE MISREPRESENTATIONS

The Omitted Material Facts

58. Throughout the Class Period, the Impugned Documents failed to state the Omitted Material Facts, namely that (i) the Technical Report contained errors and was unreliable; and (ii) the CLG Mineral Reserve and Mineral Resource estimates were overstated, invalid and/or unreliable, both as at the date of their creation and throughout the Class Period.

The Impugned Prospectuses and the Impugned AIF

59. The Impugned Prospectuses and the Impugned AIF included—either expressly or, in the case of the Second Prospectus, by the incorporation of the Impugned AIF:
- (a) statements that the Technical Report was prepared in accordance with the requirements of NI 43-101 and the SEC Mining Modernization Rules;
 - (b) summaries of the CLG Mineral Reserves and Mineral Resources estimates and descriptions of the geological setting and mineralogy at CLG; and
 - (c) in the case of the Impugned AIF and the Second Prospectus, statements that “activity at the [CLG] subsequent to the effective date of the mineral resource estimates would not result in a material change to the information contained in the Los Gatos Technical Report.”
60. Additionally, these documents described CLG as a high-quality and long-life asset:

Key Investment Highlights

High Quality and Long Life Assets

Once fully operational, the Cerro Los Gatos Mine is expected to generate average life-of-mine (“LOM”) unlevered, after-tax free cash flow of

approximately \$76 million per year on a 100% basis (or approximately \$39 million per year on a 51.5% basis).

[...]

[CLG] is expected to produce, on average, 12.2 million payable silver equivalent ounces annually through the existing mine life (or 6.3 million payable silver equivalent ounces annually on a 51.5% basis) ...

61. The Impugned Prospectuses and the Impugned AIF contained misrepresentations by failing to state the Omitted Material Facts, which were required to be stated and/or were necessary to make the above-noted statements not misleading in light of the circumstances in which they were made.
62. The Q3 2020 MD&A and Q3 2020 Financial Statements incorporated, or were required to be read together with, the IPO Prospectus, and therefore contained the same misrepresentations.

All Impugned Documents

63. All of the Impugned Documents contained statements regarding, derived from, and/or influenced by CLG's Mineral Reserves and Mineral Resources estimates. These statements were drawn from the Technical Report.
64. As noted in paragraphs 55-57, applying the Probable and Proven Mineral Reserve classifications implies a high degree of confidence in the estimates, since both of these classifications require a study with adequate information on mining, processing, metallurgical, economic, and other relevant factors to demonstrate, at the time of reporting, that economic extraction can be justified. Proven Mineral Reserves require the highest degree of confidence, and they are derived from Measured Mineral Resources, which themselves must be based on detailed and reliable exploration, sampling, and testing information gathered through appropriate techniques.

65. At all material times, the statements in the Impugned Documents regarding CLG's Mineral Reserves and Mineral Resources were misrepresentations because of the failure to disclose the Omitted Material Facts, which were required to be stated and/or were necessary to make the statements not misleading in light of the circumstances in which they were made.
66. 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.

IX. THE PUBLIC CORRECTION

67. 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.

68. The Public Correction revealed there were material misrepresentations regarding CLG's Mineral Reserves and Mineral Resources estimates. Specifically, the Public Correction revealed the existence of the Omitted Material Facts to the market.
69. In the wake of the Public Correction, a capital markets analyst at 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.”

70. 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.
71. 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 \$3.97, a decline of more than 69% from the closing price of \$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

72. 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

X. POST-CLASS PERIOD EVENTS

73. On March 8, 2022, Gatos announced the postponement of its Q4 and year-end 2021 conference call, to provide sufficient time for the completion of the 2021 annual financial statements. In doing so, Gatos stated that its 2021 financial statements may be affected by “the ongoing analysis of the CLG mineral resource and mineral reserve matters, and any potential financial statement impacts.”

XI. RIGHTS OF ACTION

Section 130 of the OSA

74. 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.
75. The Impugned Prospectuses contained the misrepresentations set out herein.

76. 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 Underwriters, the Individual Authors, and Tetra Tech.
77. 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, the Underwriters, and Tetra Tech.
78. Gatos is the issuer on whose behalf the Offerings were made.
79. Orr was a director of Gatos at the time of the Offerings.
80. All of Orr, Johnson, Electrum Group, and ESUS signed the Impugned Prospectuses, and ESUS II signed the Second Prospectus.
81. Each of the Underwriters was an underwriter of the securities in connection with the Offerings and were required to sign, and in fact did sign, the certificate required by section 59 of the *OSA* (and, if necessary, the equivalent sections of the Other Securities Legislation) for each of the Impugned Prospectuses.
82. 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).
83. ESUS and ESUS II were selling securityholders on whose behalf the Second Offering (or

part thereof) was made.

84. 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).
85. 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

86. 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 Underwriters, the Individual Authors, and Tetra Tech.
87. 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, the Underwriters and Tetra Tech.
88. As all of Gatos, Orr, Johnson, the Electrum Defendants, and the Underwriters 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.

89. 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.
90. 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.
91. 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.

92. 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.
93. The Defendants breached their duties of care, and the Prospectus Purchaser Class Members suffered damage. But for the negligence of the relevant Defendants, 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

94. 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 and the Underwriters.
95. 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, ESUS II and the Underwriters.
96. Gatos and the Underwriters were 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, the amounts received by ESUS and ESUS II from the Second

Offering pursuant to the Second Prospectus, and the amounts received by the Underwriters through the Offerings; 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.

97. 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.

98. There is no juristic reason for the enrichment of the Underwriters in the Offerings. The underwriting discounts and commissions received by the Underwriters from the proceeds of those Offerings were received by the Underwriters as a result of their own wrongful and unlawful acts. The Impugned Prospectuses contained misrepresentations, but the Underwriters signed the Certificate of the Underwriters certifying that the Impugned Prospectuses contained full, true and plain disclosure of all material facts. There is no contract, disposition of law, donative intent or other valid legal obligation that justifies the

enrichment. Any contracts upon which the Underwriters purport to rely to justify their enrichment are void and illegal.

99. 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

100. 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.
101. 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).
102. Each of the Impugned Documents is a "Core Document" within the meaning of *OSA* (and,

- if necessary, the Other Securities Legislation).
103. 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).
 104. 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.
 105. 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.
 106. 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).
 107. 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.
 108. 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

109. 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.
110. 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.
111. 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.

112. 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.
113. 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.
114. 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.

115. 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.

116. 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.

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

117. 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.

118. The Impugned Documents were filed with SEDAR and the TSX, and otherwise made available to the public, including through EDGAR, and 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.

119. 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.

120. 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.

121. 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.
122. 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.
123. 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.

XIII. VICARIOUS LIABILITY

124. 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.
125. 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.
126. 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.
127. In addition to their direct liability, the Underwriters 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.

XIV. REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

128. 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.

XV. RELEVANT LEGISLATION

129. 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.

XVI. SERVICE OUTSIDE ONTARIO WITHOUT LEAVE

130. 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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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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