

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, THE _____
JUSTICE E.M. MORGAN) DAY OF _____, _____

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, and ELECTRUM SILVER US II
LLC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an order, among other things, that this action be certified as a class proceeding, for settlement purposes only, as against the Defendants, fixing the date of the settlement approval hearing, approving the claim form and claims process, and approving the form, content and method of dissemination of a notice of certification and of a pending settlement approval hearing was heard virtually this day in Toronto, Ontario.

ON READING the materials filed, including the Settlement Agreement dated April 1, 2024 attached hereto as **Schedule “1” (“Gatos Settlement Agreement”)**, and on hearing the submissions of Counsel for the Plaintiff, Counsel for Gatos Silver Inc., Stephen Orr, Roger Johnson, Philip Pyle (collectively, **“Gatos Defendants”**), Counsel for The Electrum Group LLC, Electrum Silver US LLC, and Electrum Silver US II LLC (collectively, **“Electrum Defendants”**),

and Counsel for BMO Nesbitt Burns Inc., Goldman Sachs Canada Inc., RBC Dominion Securities Inc., Canaccord Genuity Corp., and CIBC World Markets Inc. (collectively, “**Underwriters**” and together with the Gatos Defendants and Electrum Defendants, “**Settling Defendants**”);

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

AND ON BEING ADVISED that RicePoint Administration Inc. consents to being appointed as the Administrator;

1. **THIS COURT ORDERS** that, except to the extent they are modified by this Order, the definitions set out in the Gatos Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Gatos Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that if the Gatos Settlement Agreement is not approved, is terminated in accordance with its terms, or otherwise fails to take effect for any reason, the orders herein shall be null and void and of no force or effect.
4. **THIS COURT ORDERS** that the Plaintiff’s motion for orders, among other things,
 - (a) approving the Gatos Settlement Agreement;
 - (b) approving the Plan of Allocation for distribution of the Net Settlement Amount;
 - (c) approving the form, content and method of dissemination of the Second Notices;
and
 - (d) approving Class Counsel Fees,

will be heard on June 28, 2024 beginning at 10:00am at the courthouse located at 330 University Avenue, Toronto Ontario, or virtually.

5. **THIS COURT ORDERS** that the Plaintiff is granted leave to proceed under section 138.8(1) of the *Securities Act*, RSO 1990, c S.5, as amended (“*OSA*”) (and, if necessary, the equivalent provisions of the securities legislation of the other Canadian provinces and territories) as against the Settling Defendants, except the Underwriters, to commence an action under section 138.3 of the *OSA* (and, if necessary, the equivalent provisions of the securities legislation of the other Canadian provinces and territories).
6. **THIS COURT ORDERS** that the Plaintiff is granted leave to discontinue the claims for unjust enrichment, common law negligence and common law negligent misrepresentation against the Settling Defendants, on a without costs basis.
7. **THIS COURT ORDERS** that this action is certified as a class proceeding as against the Settling Defendants, for the purpose of settlement only, pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6 (“*CPA*”), ss 2 and 5, but subject to the terms of the Gatos Settlement Agreement.
8. **THIS COURT ORDERS** that the class certified for the purpose of settlement is defined as (“**Settlement Class**” or “**Settlement Class Members**”):

All persons and entities (other than Excluded Persons), wherever they may reside or be domiciled, who:

- (i) purchased Gatos securities under the Impugned Prospectuses and in the distributions to which they related; or
- (ii) acquired Gatos securities during the Class Period on any Canadian exchange (including, without limitation, the Toronto Stock Exchange) or any Canadian alternative trading system.

For the purposes of this class definition:

“**Class Period**” means the period from October 28, 2020 until January 25, 2022 at 6:52 p.m. Eastern Standard Time.

“**Excluded Persons**” means Gatos, Stephen Orr, Roger Johnson, Philip Pyle, the Tetra Tech Defendants, the Electrum 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 Stephen Orr, Roger Johnson, Philip Pyle, Guillermo Dante Ramirez-Rodriguez and Kira Lyn Johnson; provided, however, that any “Investment Vehicle” shall not be excluded from the class. “Investment Vehicles” means any investment company, pooled investment fund, or separately managed account (including, but not limited to, mutual fund families, exchange traded funds, funds of funds, private equity funds, real estate funds, hedge funds, and employee benefit plans) in which the Underwriters, or any of them, have, has, or may have a direct or indirect interest, or as to which its affiliates may serve as a fiduciary or act as an investment advisor, general partner, managing member, or in any other similar capacity, but in which any of the Underwriters alone or together, with its, his, or her respective affiliates, is not a majority owner or does not hold a majority beneficial interest.

“**Impugned Prospectuses**” means Gatos’s Base Prep Prospectus dated October 27, 2020 and Supplemented Prep Prospectus dated October 27, 2020, and Gatos’s Short Form Base Shelf Prospectus dated July 12, 2021 and Prospectus Supplement dated July 15, 2021.

9. **THIS COURT ORDERS** that the following issue is common to the Settlement Class:

Did the Impugned Documents (as that term is defined in the Second Fresh as Amended Statement of Claim) contain misrepresentations within the meaning of the *OSA*?

10. **THIS COURT ORDERS** that Izabela Przybylska is appointed as the representative plaintiff for the Settlement Class.

11. **THIS COURT ORDERS** that Siskinds LLP, Eighty-One West Law Professional Corporation, and CFM Lawyers LLP are appointed as Class Counsel.

12. **THIS COURT ORDERS** that the form and content of the Short-Form First Notice, substantially in the form attached as **Schedule “2”**, is approved.

13. **THIS COURT ORDERS** that the form and content of the Long-Form First Notice, substantially in the form attached as **Schedule “3”**, is approved.
14. **THIS COURT ORDERS** that the Notice Plan, substantially in the form attached as **Schedule “4”**, is approved for the purpose of the publication and dissemination of the Short-Form First Notice and Long-Form First Notice (together, “**First Notices**”).
15. **THIS COURT ORDERS** that Class Counsel shall post the proposed Plan of Allocation at <https://www.cfmlawyers.ca/active-litigation/gatos-silver-inc-tsx-gato/> and <https://www.siskinds.com/class-action/gatos-silver/> no later than 30 days prior to the hearing date set out in paragraph 4 hereof.
16. **THIS COURT ORDERS** that any person who opted out of this action in a valid and timely manner in accordance with paragraphs 15 to 17 of the Order of this Court dated January 4, 2024 shall be excluded from the Settlement Class.
17. **THIS COURT ORDERS** that Settlement Class Members who wish to file with the Court an objection or comment on the Settlement or the request for approval of Class Counsel fees and disbursements shall deliver a written statement to Class Counsel, at the address indicated in the First Notices, no later than 21 calendar days prior to the hearing date set out in paragraph 4 of this Order.
18. **THIS COURT ORDERS** that RicePoint Administration Inc. is appointed as the Administrator.
19. **THIS COURT ORDERS** that the Claim Form, substantially in the form attached as **Schedule “5”**, is approved.

20. **THIS COURT ORDERS** that to be entitled to participate in a distribution from the Net Settlement Amount, a Settlement Class Member must:

- (a) submit a properly completed Claim Form to the Administrator, using the online claim portal established by the Administrator or by submitting a paper Claim Form by mail or courier to the Administrator, postmarked or received by the Administrator on or before 11:59pm Toronto (Eastern) time on the date that is one hundred and eighty (180) calendar days after the date on which the First Notices are first published;
- (b) submit, together with the Claim Form, any supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Administrator; and
- (c) otherwise comply with the instructions set out in the Claim Form.

21. **THIS COURT ORDERS** that Gatos shall forthwith deliver or cause to be delivered to the Administrator the information required under section 5.6 of the Gatos Settlement Agreement.

THE HONOURABLE JUSTICE E.M. MORGAN