

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE E. M. MORGAN)

WEDNESDAY, THE 10TH
DAY OF APRIL, 2024

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, approving the settlement of the action as against Tetra Tech, Inc., Guillermo Dante Ramirez-Rodriguez and Kira Lyn Johnson (“**Tetra Tech Defendants**”) was heard virtually on Wednesday, April 10, 2024.

ON READING the materials filed, including the Settlement Agreement dated December 19, 2023 attached hereto as **Schedule “1”** (“**Settlement Agreement**”) and on hearing the submissions of Counsel for the Plaintiff and Counsel for the Tetra Tech Defendants.

AND ON BEING ADVISED that the deadline for objection to the Settlement Agreement has passed and there have been no objections.

AND ON BEING ADVISED that the Tetra Tech Defendants consent to this Order.

AND ON BEING ADVISED that the remaining Defendants Gatos Silver, Inc., Stephen Orr, Roger Johnson, Philip Pyle, The Electrum Group LLC, Electrum Silver US LLC, and Electrum Silver US II LLC take no position with respect to this Order.

1. **THIS COURT DECLARES** that except as otherwise stated, this Order incorporates and adopts the definitions set out in the Settlement Agreement.

2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.

3. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to section 27.1 of the *Class Proceedings Act*, 1992, SO 1992, c 6 (“CPA”).

4. **THIS COURT DECLARES** that the Settlement Agreement, in its entirety (including the Recitals), forms part of this Order and is binding upon the Tetra Tech Defendants, the Plaintiff, and all Settlement Class Members who did not opt out, including those persons that are minors or mentally incapable, and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 are hereby dispensed with.

5. **THIS COURT ORDERS** that the class definition set out in paragraph 7 of the Certification Order dated January 4, 2024, is amended, for settlement purposes, to the following:

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

- purchased Gatos Silver securities under the Impugned Prospectuses and in the distributions to which they related; or
- acquired Gatos Silver 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 definition of the Settlement Class:

- "Class Period" means the period from October 28, 2020, until January 25, 2022 at 6:52 p.m. Eastern Standard Time.
- "Electrum Defendants" means The Electrum Group LLC, Electrum Silver US LLC, and Electrum Silver US II LLC.
- "Excluded Persons" means Gatos Silver, 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 Silver, 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 Underwriter Defendants, 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 Underwriter Defendants alone or together, with its, his, or her respective affiliates, is not a majority owner or does not hold a majority beneficial interest.

6. **THIS COURT ORDERS** that the Settlement Agreement shall be implemented in accordance with its terms.

7. **THIS COURT ORDERS** that the Plaintiff and the Tetra Tech Defendants may, on notice to the Court but without the need for a further order of the Court, agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

8. **THIS COURT ORDERS AND DECLARES** that, other than as provided in section 2.4 of the Settlement Agreement, the Tetra Tech Defendants have no responsibility for and no liability whatsoever with respect to the ongoing administration of the Settlement Amount.

9. **THIS COURT ORDERS AND DECLARES** that the Releasors shall release and discharge, and shall be conclusively deemed to have fully, finally and forever released and discharged the Releasees from the Released Claims.

10. **THIS COURT DECLARES** that all claims against the Releasees for contribution, indemnity or other claims, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, in any way arising from or relating to the allegations in this Action, which were made or which could have been or could be made by any Non-Settling Defendant or any other person or party against the Tetra Tech Defendants, or by the Tetra Tech Defendants against any Non-Settling Defendant, are barred, prohibited and enjoined.

11. **THIS COURT ORDERS AND DECLARES** that if there is a right of contribution and indemnity or other claim, whether in equity or in law, by statute or otherwise between any or all of the Defendants:

- (a) the Plaintiff and the Settlement Class Members shall not be entitled to claim or recover from any Non-Settling Defendant that portion of any damages, interest and costs that corresponds to the proportionate liability of the Releasees proven at trial or otherwise;
- (b) the Plaintiff and Settlement Class Members shall limit their claims against the Non-Settling Defendants, and shall only seek to recover from the Non-Settling Defendants those claims for damages, interest and costs attributable to the aggregate of the several liability of the Non-Settling Defendants and, for greater certainty, the Plaintiff and the Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants if permitted by law; and

- (c) the Court has full authority to determine the proportionate liability of the Releasees at the trial or other disposition of this action, whether or not the Releasees appear at the trial or other disposition, and the proportionate liability of the Releasees shall be determined as if the Releasees are parties to this action and any determination by the Court in respect of the proportionate liability shall only apply and shall not be binding on the Releasees in any other proceedings.

12. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court brought as if the Settling Defendants remained parties to this action, on at least ten (10) days' notice to Counsel for the Settling Defendants, seek orders for the following:

- (a) documentary discovery and affidavit(s) of documents from the Settling Defendants in accordance with the Ontario Rules of Civil Procedure;
- (b) oral discovery of representative(s) of the Settling Defendants, the transcript(s) of which may be read in at trial;
- (c) leave to serve request(s) to admit on the Settling Defendants in respect of factual matters; and/or
- (d) the production of representative(s) of the Settling Defendants to testify at trial, with such witness(es) to be subject to cross-examination by counsel for the Non-Settling Defendants.

13. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 12, including on the basis that, as a matter of fact and law, the Non-Settling Defendants ought not to be entitled to discovery rights as set out in paragraph 12

as if the Settling Defendants continued to be parties to this action. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with paragraph 12. Notwithstanding any provision in this order, on any motion brought pursuant to paragraph 12, this Court may make such orders as to costs and other terms as it considers appropriate.

14. **THIS COURT ORDERS** that a Non-Settling Defendant may serve the motion(s) referred to in paragraph 12 above on the Settling Defendants by service on Counsel for the Settling Defendants in this Action.

15. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages or judgment against them in favour of the Plaintiff or the Settlement Class Members or the rights of the Plaintiff or the Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.

16. **THIS COURT ORDERS** that this Order, including but not limited to the approval of the Settlement Agreement and any reasons given by the Court in relation thereto, except as to paragraphs 11 and 12 above, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing proceeding and, without restricting the generality of the foregoing, may not be relied on by any person to establish the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in this action as against the Non-Settling Defendants.

17. **THIS COURT ORDERS** that the within action be and is dismissed as against the Tetra Tech Defendants with prejudice and without costs.

18. **THIS COURT ORDERS** that as soon as practicable following the entry of this Order, Class Counsel shall post this Order on <https://www.cfmlawyers.ca/active-litigation/gatos-silver-inc-tsx-gato/> and <https://www.siskinds.com/class-action/gatos-silver/>.

THE HONOURABLE JUSTICE E.M. MORGAN

PRZYBYLSKA

-and- GATOS SILVER INC., et al
Plaintiff

Defendant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act*, 1992

ORDER

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Lawyers for the Plaintiffs