

COURT FILE NO. 2503 00016

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON



IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT*
ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF **KMC MINING CORPORATION**

DOCUMENT **AFFIDAVIT #3 OF DANIEL KLEMKE**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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File # 204-219113
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2800 Rice Howard Place
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AFFIDAVIT OF DANIEL KLEMKE
SWORN ON THE 16 DAY OF NOVEMBER, 2025

I, Daniel Klemke, of the City of St. Albert, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am the President and CEO of KMC Mining Corporation ("**KMC**" or the "**Applicant**"), and as such, have personal knowledge of the matters hereinafter deposed to save where:
 - a) stated to be based upon information and belief and where so stated I do believe the information to be true; or
 - b) I have informed myself from books or records maintained by KMC, and where I have done so, these books or records were part of KMC's ordinary books or records and any entries in these books or records were made in the usual and ordinary course of KMC's business.
2. I am authorized to make this Affidavit on behalf of KMC.
3. Unless otherwise stated, all monetary references in this Affidavit are references to Canadian dollars.

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Clerk's Stamp

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1. I am the President and CEO of KMC Mining Corporation ("**KMC**" or the "**Applicant**"), and as such, have personal knowledge of the matters hereinafter deposed to save where:
 - a) stated to be based upon information and belief and where so stated I do believe the information to be true; or
 - b) I have informed myself from books or records maintained by KMC, and where I have done so, these books or records were part of KMC's ordinary books or records and any entries in these books or records were made in the usual and ordinary course of KMC's business.
2. I am authorized to make this Affidavit on behalf of KMC.
3. Unless otherwise stated, all monetary references in this Affidavit are references to Canadian dollars.

A. Relief Sought and Introduction

4. I swear this Affidavit in support of an application by KMC for an order extending the stay of proceedings against KMC, which currently expires on November 30, 2025, to and including January 31, 2026.
5. This Affidavit provides an overview of the CCAA proceedings, focused on germane updates since my July 21, 2025 Affidavit ("**Klemke Affidavit #2**") and as needed, should be read in conjunction with the Klemke Affidavit #2, my May 9, 2025 Affidavit ("**Klemke Affidavit #1**"), Affidavits of Bryn Jones sworn April 7, 2025 ("**Jones Affidavit #3**"), January 14, 2025 ("**Jones Affidavit #2**") and December 31, 2024 ("**Jones Affidavit #1**").

B. Status of Proceedings

6. On January 10, 2025, Justice Lema granted KMC's requested relief, in all respects, to have its Notice of Intention of Proceedings under the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("**BIA**") taken up and continued under the provisions of the *Companies Creditors Arrangement Act*, RSC 1985, c-36 as amended ("**CCAA**") (the "**Initial Order**").
7. Concurrent with the granting of the Initial order, the Court granted an Order approving a Sales and Investment Solicitation Process (the process is herein called the "**SISP**" and the Order the "**Sales Process Order**") through which KMC proceeded to attempt to monetize its assets in an effort to pay down its indebtedness.
8. On January 20, 2025, Justice Neilson granted KMC's application for an Amended and Restated Initial Order ("**ARIO**"), which extended the stay of proceedings until and including June 16, 2025. The ARIO included approval of a Key Employee Retention Plan ("**KERP**").
9. Concurrent with the granting of the ARIO, the Court granted an Order establishing a process for the sale or return of KMC's leased equipment (the "**Lease Equipment Return Process Order**").
10. Pursuant to the SISP, the marketing period was launched by the sales agent, Ernst & Young Orenda Corporate Finance Inc and Ernst & Young Corporate Finance (Canada) Inc.
11. The only party providing a deposit in accordance with the requirements of the SISP was 2122256 Alberta Ltd o/a Heavy Metal Equipment & Rentals (the "**Purchaser**"), who made the *en bloc* offer for

substantially all of the KMC assets and executed an Asset Purchase Agreement ("**APA**") in respect of same (the "**Transaction**").

12. While the purchase price of the assets was insufficient to retire the indebtedness to KMC's primary secured lender (the "**Syndicate**") or repay in full the amounts owing to equipment lessors, KMC determined that the Purchaser's offer represented the greatest return for stakeholders at the time.
13. On April 17, 2025, the Court granted a Sale Approval and Vesting Order, which approved the Transaction (the "**SAVO**").
14. Concurrent with the granting of the SAVO, the Court granted an Order authorizing and directing the Monitor to make interim distributions of up to 66 2/3% of the net sale proceeds from the Transaction to those secured creditors whose collateral was sold as part of the Transaction.
15. No party opposed the Transaction. The Transaction had the support of the Syndicate, various equipment lessors whose equipment was included in the Transaction and the Monitor.
16. The Transaction closed on May 2, 2025, and sale proceeds more than \$100 Million were wired to the Monitor upon closing of the Transaction.
17. On May 23, 2025, Justice Harris granted KMC's application which extended the stay of proceedings to and including July 31, 2025 (the "**First Extension Order**"). Concurrent with the granting of the Second Extension Order, the Court granted an order approving the Monitor's proposed cost allocation among the secured creditors and authorized and directed the Monitor to make a further distribution of the funds held by it to the secured creditors whose collateral was sold as part of the Transaction.
18. On July 30, 2025, Justice Mah granted KMC's application which extended the stay of proceedings to and including November 30, 2025 (the "**Second Extension Order**") as well as certain other relief related to return of landlord security deposits, assignment of certain insurance claims to secured creditors and settling certain grievance claims of Local Union No. 955 members.
19. KMC seeks an extension of the stay of proceedings.

C. Extension of the Stay of Proceedings Continues to be Appropriate

20. While substantially all the assets and equipment of KMC were sold in the Transaction, there remain numerous items KMC is actively working on prior to concluding these CCAA proceedings. Those are detailed below.

i. Employees and Current Operations

21. As described within the Jones Affidavit #3, as of April 4, 2025, and prior to the Transaction closing, KMC employed 92 full-time employees or subcontractors, of which 14 were located at its head office in Edmonton, Alberta, 40 on a labour supply project in British Columbia, and 38 field employees working in Fort McMurray or a field office location maintained there.
22. With the Transaction closed, and most of KMC's current operations having been wound down, KMC has taken active steps to reduce its workforce.
23. At present time KMC has approximately 5 employees full and part time in Edmonton and two mechanics under a subcontracting agreement with the Purchaser.
24. With respect to one labour and supply contract, as mentioned in my prior Affidavit, KMC had a purchase order with Hudbay Minerals ("**Hudbay**") at its copper mountain mine in British Columbia to supply equipment operators to the site. That purchase order commenced at or around the date of the Initial Order and after several extensions, concluded in September 2025. At present time, KMC has no further employees subcontracted to Hudbay. Hudbay paid the final invoice owing to KMC in November 2025.

ii. Suncor Claims

25. As described within previous affidavits, the circumstances necessitating these CCAA proceedings arose due to several factors, though chief among those factors being the sudden and unexpected cancellation of substantial scopes of work under contracts between KMC and Suncor Energy Inc. ("**Suncor**") or affiliates.
26. Prior to these CCAA proceedings, Suncor was KMC's most significant, if not only, customer. KMC had been providing contracting mining services to Suncor for several decades.

27. Suncor's contracting practice generally, and with KMC specifically, utilizes a master Multiple Use Agreement ("**MUA**") which sets out general terms and conditions, and allows for the entering of multiple sub-agreements, contracts or purchase orders under the umbrella of the MUA for any number of different projects or scopes of work.
28. The outline of the issues between KMC and Suncor have been presented in previous affidavits sworn in these proceedings, and particularly Jones Affidavit #1. KMC believes it has substantial claims against Suncor which can be broadly characterized as follows:
- a) a claim for the impacts of adverse site conditions and extended hauling distances on the 2024 Fort Hills Overburden scope of work (the "**Condition Impact Claim**");
 - b) a claim for demobilization costs as permitted under the MUA and applicable purchase order for the 2024 Fort Hills Overburden scope of work (the "**Demobilization Claim**");
 - c) a claim for damages arising from the cancelation of the 2024 Fort Hills Overburden scope of work for convenience (the "**Overburden Cancellation Claim**");
 - d) a claim for damages arising from the cancelation of the waste stream and rejects scope of work (the "**Rejects Cancellation Claim**"); and
 - e) a claim for damages for the breach of the Settlement and Release Agreement arising from the cancellation of the 2019 Overburden Removal Contract (the "**Breach of Settlement Claim**").
29. KMC's legal counsel conducted a high-level overview of the potential claims against Suncor for, *inter alia*, the circumstances described above. That evaluation has concluded and it has been reviewed. The combined damage estimate at this time is in the tens of millions of dollars, with further evaluation ongoing that could materially increase said estimate.
30. KMC has been engaged with litigation funders in assessing its options for pursuit of the claims against Suncor. As part of that process, KMC has engaged separate legal counsel to provide a second opinion on the potential claims against Suncor. That evaluation is ongoing, with the second opinion scheduled to be delivered by the end of November.
31. Upon receipt of the second opinion, KMC will be in position, after discussions with the Syndicate, to best determine the next course of action with respect to the potential claims against Suncor.

32. If successful, even in part, the claims against Suncor, and recovery therefrom, would have a material, positive outcome for KMC's stakeholders. KMC's main goal at this time is to maximize its remaining assets for the benefit of its stakeholders.

iii. Miscellaneous Items

33. The following is a non-exhaustive list of other matters which KMC is also working on as part of its wind down process:
- a) KMC had been actively working on, and has now largely completed as of September 2025, winding up non-union staff's pension plan with Canada Life/ London life. KMC is presently waiting review and approval from the pension regulator in Alberta to confirm the pension termination is approved. Following approval, pension members will be free to move their pension assets from the plan or maintain individual accounts with Canada Life;
 - b) KMC has been working with the Workers' Compensation Board ("**WCB**") to reconcile 2024 accounts based on a reduced actual payroll than was originally forecasted, reconciliation of premiums paid and credits owed, and to finalize rebates from WCB. KMC has received a credit refund from WCB for 2024. As KMC has certain mechanics still working as described previously in this Affidavit, KMC will draw on its WCB credit and a 2025 WCB account reconciliation will be necessary to finalize any additional refunds;
 - c) KMC is working with its heavy equipment insurer with respect to refunds from certain insurance policies previously held by KMC. The latest update is that approximately \$500,000 is expected to be refunded to KMC within the next couple weeks; and
 - d) KMC is both a Plaintiff and Defendant in actions related to a new Komatsu 830E that KMC rented from SMS Equipment ("**SMS**"), which was destroyed by fire within 10 hours of commencing work. While the action of SMS against KMC is currently stayed, KMC and its counsel are evaluating as to what potential monetary benefit KMC may have, if KMC pursues a claim (whether insurance or litigation). KMC suffered a loss of approximately \$600,000 related to loss of KMC property (tires) as well as cost of removing burned materials from the site where the fire occurred. KMC has taken steps to preserve their rights to this potential claim (by both commencing litigation to preserve limitation periods, and entering into standstill agreements with its insurer with respect to any insurance claim).

34. The maintenance of the stay is important to enable KMC to continue to effectively wind down its operations and develop a plan for its exit from these proceedings without regard to having to advance defences respecting claims or collection efforts of creditors.

D. Stay of Proceedings – Wilson Action

35. KMC is a Defendant in Court File No. 2103 02652 (*Wade Wilson v KMC Mining Corporation*) ("**Wilson Action**"). In brief, this is a claim that seeks to certify a class action claim related to alleged underpayment of severance and pension plan payments to certain KMC former employees. The Amended Amended Statement of Claim filed September 15, 2025 is attached as **Exhibit "A"**.
36. While KMC wholly disputes the claim, I am informed by my counsel, and do verily believe, that the claim is stayed by virtue of the Amended and Restated Initial Order granted January 20, 2025 in these proceedings, and the subsequent stay of proceedings extensions.
37. Presently, counsel for the Plaintiff in Wilson Action has an Application scheduled for November 20, 2025 to, among other things, seek summary judgment and to certify the action as a class action. That Application is attached as **Exhibit "B"**.
38. To avoid any lack of clarity on the matter and to avoid the need for KMC to be expending resources responding to a claim that, in KMC's opinion, is clearly stayed, KMC seeks a declaration from the Court that the Wilson Action is stayed.

E. Sealing Order

39. There were a number of Sealing Orders granted in these proceedings, and in the NOI Proceedings (Court File No. 24-3162620) ("**NOI Proceedings**") which were taken up in these proceedings. All Sealing Orders have an expiry of December 31, 2025.
40. Most of the Sealing Orders relate to prior valuation of KMC assets, the Transaction or a key employee retention plan. With the Transaction closed and the assets sold, the Sealing Orders have served their purpose for those matters.
41. However, there are two Affidavits, or portions thereof, which KMC believes an extension of the applicable Sealing Orders to June 30, 2026 is appropriate, due to the fact they contain commercially

sensitive information related to, among other things, KMC's contracts with Suncor. KMC is unaware of any reason why the continued sealing would be prejudicial to any party.

F. Conclusion

42. KMC continues to, as it has throughout these entire proceedings, act in good faith and with due diligence.
43. In the circumstances, the extension of the stay of proceedings and ancillary relief is appropriate in the circumstances.

SWORN BEFORE ME at Edmonton,)
 Alberta, this 16 day of November, 2025)


 _____)
 Commissioner for Oaths in and for Alberta)



 DANIEL KLEMKE

Zachary Soprovich
 Barrister & Solicitor

This is **Exhibit "A"** referred to in the Affidavit
of DANIEL KLEMKE sworn before me
on the 16 day of November, 2025.



A Commissioner for Oaths in and for
the Province of Alberta

Zachary Soprovich
Barrister & Solicitor

COURT FILE NUMBER 2103-02652

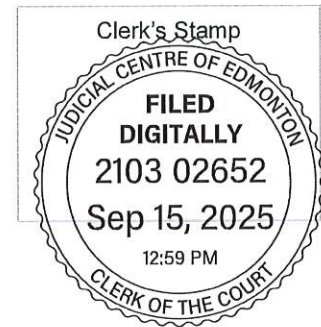
COURT COURT OF QUEEN'S KING'S
BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF(S) WADE WILSON

DEFENDANT(S) KMC MINING CORPORATION

DOCUMENT AMENDED AMENDED
**STATEMENT OF CLAIM BROUGHT
UNDER THE CLASS
PROCEEDINGS ACT**



AMENDED *E. Wheaton*
on Sep 15, 2025
before the close of pleadings

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Neufeld Legal Professional Corporation
77 Tuscany Ridge Mews NW
Calgary, Alberta T3L 3B7
Attention: Christopher Neufeld
Telephone: 403-400-4092
Fax: 866-208-0722
Email: chris@neufeldlegal.com

NOTICE TO DEFENDANT

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

The Representative Plaintiff:

1. Plaintiff, WADE WILSON ("**Wade**"), is an individual residing in the Town of Fort McMurray, in the Province of Alberta. At all material times, Wade was an employee of KMC MINING CORPORATION ("KMC") for over Twenty (20) years.

The Class Members:

2. Wade (the "**Representative Plaintiff**") brings this action pursuant to the *Class Proceedings Act*, R.S.A. 2003, c. C.16-5 (the "**CPA**"), on behalf of the following class (the "**Class Members**"):
 - a. All employees and former employees (including their estates, executors, guarantors and personal representatives) of whose employment contract or terms

~~of employment or engagement with KMC that were non-unionized, from September 15, 2000, until notice is delivered to the Class included, or were otherwise entitled to, the payment of overtime pay, general holiday pay, general holiday pay when working, vacation pay, vacation pay on termination of employment and/or severance pay that was not calculated and paid in accordance with the *Employment Standards Code* (Alberta) and applicable case law; and~~

- ~~b. All employees and former employees (including their estates, executors, guarantors and personal representatives) who are beneficiaries of, or otherwise entitled to, KMC's Pension Plan for the Employees of KMC Mining Corporation and were adversely impacted by the underreporting and/or underpayment of KMC's contributions to the Pension Plan for the Employees of KMC Mining Corporation in contravention of the *Canada Income Tax Act*, the *Canada Pension Plan*, the *Alberta Employment Pension Plans Act*, other related statutes and regulations, and applicable case law.~~

3. Wade also brings this action pursuant to the CPA, on behalf of the following 2 subclasses (the "**Subclass Members**"):

- a. All employees and former employees (including their estates, executors, guarantors and personal representatives) of KMC, that were non-unionized, that received overtime pay and/or received pay for hours worked in excess of their regular hours worked (the "**Overtime Subclass Members**"):
- b. All former employees (including their estates, executors, guarantors and personal representatives) of KMC, that were non-unionized, who were terminated by KMC without cause and were not paid sufficient severance pay in conformity with applicable case law in the Province of Alberta (the "**Terminated Subclass Members**").

The Defendant:

- 4. Defendant, KMC MINING CORPORATION ("**KMC**"), is a body corporate incorporated in the Province of Alberta and operating in the Province of Alberta. On the Representative Plaintiff's employment contract, Statements of Earnings and Deductions and T4 Statements of Remuneration Paid filed with the Canada Revenue Agency, KMC is listed as the Representative Plaintiff's employer.

History:

- 5. KMC is a contract service provider to mining and infrastructure development projects based in Acheson, Alberta, whose project work in northern Alberta alone is measured in the Billions of Dollars.
- 6. Upon information and belief, KMC has over five hundred (500) employees and over Two Hundred Million Dollars (\$200,000,000.00) of assets.
- 7. KMC has been extremely lucrative for its private shareholders, with those shareholders having profited from KMC to the tune of Hundreds of Millions of Dollars.

Cause of Action:

I. Selective Adherence to Employment Standards Legislation

8. There would appear to be an underlying theme to KMC's employee relations, in that KMC engages in selective adherence to provincial employment standards legislation where it serves their financial interests, and even seeks to apply the lesser employment standards of other provinces and/or countries for its employees, as opposed to complying with the Alberta *Employment Standards Code*, R.S.A. 2000, c. E-9 (the "**Code**") and applicable case law (collectively, "**Alberta Law**").
9. Furthermore, KMC would appear willing to forego their adherence to Alberta Law and utilize their financial power to effectuate their preferred employment resolutions and pay structures in direct contravention of Alberta Law, facilitating its own unjust enrichment.
10. Alberta Law would appear to be an obstacle to KMC's commercial objectives that they seek to overcome by resorting to their sheer financial power and their manipulation of the power imbalance between employer and employee, with KMC's corporate leadership and shareholders being focused on their highly disproportionate profiteering and personal wealth accumulation.

II. Underpayment of Statutory Pay

11. With labour being one of KMC's most significant costs, KMC's priority appeared to be placed on controlling labour costs and maximizing shareholder returns, as opposed to insuring ensuring statutory compliance with the Code.
12. KMC would appear to have shown little, or no, interest in insuring ensuring that their payroll methodology was in full compliance with the Code, instead KMC has demonstrated its disdain for the Code and the statutory protections that it provides to its employees, or alternatively, KMC was exceedingly negligent in its failure to ensure the statutory compliance of the outputs from its payroll software and advisement on payroll, so as to allow for the improper reporting and employee underpayments.
13. By failing to insure ensure that its payroll practices were in compliance with the Code, KMC has subjected its employees to decades of statutory underpayments, while KMC has improperly retained this employee money without investing the time and effort to insure ensure compliance, or worse yet, knowingly failing to implement the specific Code obligations given the costs and liabilities associated therewith, combined with the belief that KMC would not be challenged on their payroll practices or the costs associated therewith would be offset by the overall savings from continued non-compliance.
14. Many ongoing employee payments are derived from specific calculations drawn from the explicit language of the Code, including but not limited to overtime pay, general holiday pay, general holiday pay when working, vacation pay and vacation pay on termination (collectively, "**Statutory Pay**").
15. With respect to the Representative Plaintiff and other Class Members, each form of Statutory Pay is determined in accordance with a calculation of wages as is prescribed by paragraph 1(1)(x) of the Code.

16. Wages are defined at paragraph 1(1)(x) of the Code as follows:

“wages” includes salary, pay, money paid for time off instead of overtime pay, commission or remuneration for work, however calculated, but does not include

- (i) overtime pay, vacation pay, general holiday pay and termination pay,
- (ii) a payment made as a gift or bonus that is dependent on the discretion of an employer and that is not related to hours of work, production or efficiency,
- (iii) expenses or an allowance provided instead of expenses, or
- (iv) tips or other gratuities;

17. In each instance, the Code has a clear and discernable methodology for the determination of whether or not a particular payment forms a part of wages, so as to correctly calculate and pay the Statutory Pay due to a company's employees.

18. KMC's practice as to the Representative Plaintiff, and apparently all Class Members, was not to compute wages in accordance with the Code, but instead to simply rely upon the lesser amount that is the regular hourly pay ("**Regular Pay**"), which is designated as R-T on their Statement of Earnings and Deductions (the "**Pay Statements**").

19. KMC's listing of Regular Pay on their Pay Statements however does not suffice to meet the statutory requirements of the Code, which requires the specific inclusion of an employer "wage rate" as per subsection 14(2) of the Code.

20. Regular Pay as designated on the Pay Statements is but a single component necessary for the computation of wages as per the Code, yet as is discernable from the Pay Statements it is not the sole component, with many other items also forming part of the computation of wages per the Code.

21. Among the additional earnings components from the Pay Statements that could or do form part of wages for the Representative Plaintiff and the Class Members are performance incentive, jump, trade premium, resident retention, employer benefit plan payments and employer pension plan payments (the "**Additional Wage Components**").

22. Each of these Additional Wage Components, upon meeting the statutory and case law standards for inclusion, must necessarily be included in the computation of wages and in turn the Statutory Pay.

23. ~~These Certain of the~~ Additional Wage Components would appear to have been utilized by KMC for purposes of calculating termination pay in lieu of notice, however when undertaking its calculation of other Statutory Pay, which is similarly based on use of the Code's definition of wages, KMC chooses to deny, without any legal basis, the inclusion of any Additional Wage Component. KMC is obligated to include those Additional Wage Components in their wage calculations going forward and retroactively, failing which KMC is in breach of good faith, trust and their fiduciary duty to their employees.

24. The Additional Wage Components cannot be excluded from the calculation of wages, either by contract or for ease in computation of payments that are due to employees, given the Code's clear protections to employees, including but not limited to section 4 of the Code.
25. Similarly, an employer cannot avoid recalculating its employees' wages at a later date such that it might correct the payment of Statutory Pay that had been earned by its employees and was originally underpaid.
26. The result of KMC's failure to include the Additional Wage Components in its calculation of wages for purposes of subsequently calculating Statutory Pay that is directly determined pursuant to the Code, such as overtime pay, general holiday pay, general holiday pay when working, vacation pay and vacation pay on termination of employment, has resulted in the significant underpayment of its employees over the years, even though those amounts have been fully earned and outstanding. Furthermore, the aforementioned earned amounts are held in trust by KMC (the "**Earnings in Trust**"); and the Representative Plaintiff and the other Class Members have a priority security interest over the assets of KMC as to the prescribed statutory limit of the Earnings in Trust, pursuant to subsections 109 (2) and (3) of the Code.
27. The Earnings in Trust at no time reverted back to KMC, instead being held in trust by KMC pursuant to the Code, for years, even decades, until such time as the Earnings in Trust are paid out to their rightful beneficiaries, being the Representative Plaintiff and other Class Members.

III. Reliance Upon Ontario Employment Standards Legislation for Payroll

28. KMC's underpayment of Statutory Pay to the Representative Plaintiff and other Class Members would appear to emanate in large part from KMC's apparent reliance upon payroll systems and practices that were designed for the province of Ontario and/or other foreign jurisdictions, as opposed to the province of Alberta.
29. KMC's payroll practices and pay statements for the Representative Plaintiff and other Class Members would appear to have been largely in conformity with the Ontario *Employment Standards Act, 2000*, S.O. 2000, c. 41 (the "**Ontario Act**"), in that:
 - a. there is no absolute statutory requirement to set forth the wage rate and the overtime rate on pay statements for Ontario employees [see Ontario Act, section 12(1)(b)];
 - b. furthermore, there is no definition of wage rate in the Ontario Act, which creates the potential for significant ambiguity around the term, such that the term carries limited legal import in the province;
 - c. similarly, there is no definition of overtime rate in the Ontario Act, with overtime pay being a calculation predicated on regular rate, which is substantively different from the concept of wage rate and wages [see Ontario Act, section 22(1) and section 1(1) definition of "regular rate"];

- d. there is no requirement to include employer contributions to employee benefit plans given that Ontario is the only province that specifically exempted them from wages (but did restore them for purposes of the termination notice period and termination pay in lieu of notice) [see Ontario Act, section 1(1) definition of 'wages' at paragraph (g) and section 61(1)(b)];
 - e. as employer contributions to employee benefit plans do not form part of wages in Ontario, there is no requirement to include them in the payment statement's wage breakdown ('earnings'), such that they are not required to be listed in the pay statements [see Ontario Act, section 12(1)];
 - f. there tends to be little practical need for non-travel allowances, such that Ontario employees tend not to be entitled to such allowances and thereby do not require an adjustment to their wages;
 - g. given that bonuses would not form part of payment in "the employee's usual work week, not counting overtime hours", bonuses would not be included in the calculation of an Ontario employee's overtime pay [see Ontario Act, section 1(1) definition of 'regular rate' and section 22(1)] nor with respect to premium pay where an employee works on a general holiday [see Ontario Act, section 24(2)]; and
 - h. the exclusion of the prior year's vacation pay from the calculation of an Ontario employee's vacation pay is explicitly prescribed by statute [see Ontario Act, section 35.2].
30. However, undertaking the aforementioned payroll practices and preparation of pay statements is not permissible for Alberta-based employees, given the immense differences in the Code:
- a. wage rate and overtime rate are an absolute requirement on each and every pay statement issued to an Alberta-based employee [see Code, sections 14(1)(b) and (2)(a)];
 - b. wage rate is specifically defined in Alberta and it is reliant upon the definition of wages [see Code, section 1(1)(y)];
 - c. overtime rate is also specifically defined in Alberta and it is reliant upon the definition of wage rate [see Code, sections 1(1)(s.2) and 22(1)];
 - d. there is no exclusion for employer contributions to a benefit plan, such that it is remuneration that must necessarily form part of wages [see Code, section 1(1)(x)];
 - e. given that employer contributions to a benefit plan form part of wages, they must be included and individually listed in the earnings breakdown on every pay statement [see Code, sections 14(1)(c) and (2)(a)];
 - f. non-expense allowances, such as those commonly found with Alberta-based employees working out in the field, are required to form part of wages [see Code, section 1(1)(x)];

- g. given that that overtime pay in Alberta is not calculated on the basis of a regular rate that is premised on a "usual work week", but on wage rate [see Code, section 22(1)], it must necessarily incorporate those bonuses that statutorily form part of wages, which also pertains to general holiday pay when working [see Code, section 30(b)]; and
 - h. the current year's vacation pay calculation must include the prior year's vacation pay in its calculation [see Code, section 43].
- 31. Nevertheless, KMC apparently felt that it was legally sufficient to acquire and implement payroll software that was more specific to the province of Ontario and/or other foreign jurisdictions and thereupon undertake its payroll practices in conformity more aligned with the province of Ontario and/or other foreign jurisdictions, as opposed to the province of Alberta.
- 32. These underpayments, however, have continued to accrue in trust for the Representative Plaintiff and other Class Members as they have been earned in accordance with the Code, irrespective KMC's reliance upon payroll software and payroll practices that are not compatible with the Code and its provision of statutorily-deficient misinformation to the Representative Plaintiff and other Class Members.

IV. Pension Plan Underreporting and Underpayment

- 33. Furthermore, the Representative Plaintiff and other Class Members partook in KMC's defined contribution pension plan, Pension Plan for the Employees of KMC Mining Corporation (the "**Pension Plan**").
- 34. The Pension Plan was presented as a defined contribution pension plan that would be funded from contributions of both the employee and the employer, with the respective contribution rates being an employee contribution of Two Percent (2%) of the employee's pensionable earnings and an employer contribution of Five Percent (5%) of the employee's pensionable earnings.
- 35. However, the pensionable earnings computation that is utilized by KMC lacks any correlation with any legislative methodology for its calculation, even though it seeks to be perceived as such, be it the Canada *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), the Canada *Pension Plan*, R.S.C. 1985, c. C-8, the Alberta *Employment Pension Plans Act*, S.A. 2012, c. E-8.1 (the "**Pension Act**") or any other related statute or regulation (collectively, the "**Pension Legislation**").
- 36. The pensionable earnings computation is an established formula for purposes of calculating an employees' Canada Pension Plan ("**CPP**") and Registered Retirement Savings Plan ("**RRSP**") contributions and entitlements, yet KMC has sought to deviate significantly therefrom when undertaking calculations related to the Pension Plan, without appropriately clarifying the distinction from the established formula.
- 37. In undertaking their unique calculation of pensionable earnings, KMC excludes many variables that form part of the established formula for pensionable earnings, which is also in contravention of Canadian Association of Pension Supervisory Authorities (CAPSA) Guidelines, and yet persists in characterizing this computation as one and the same with the standard pensionable earnings computation.

38. KMC's distorted lesser computation of pensionable earnings arises from KMC's exclusion of upcharges, benefits and non-expense allowances from its calculations, which are mandated for inclusion in all of the Pension Legislation, and put forth in the Canadian Association of Pension Supervisory Authorities (CAPSA) Guidelines, yet are specifically excluded in KMC's calculations and presentation to its employees.
39. Given KMC's exclusion of both benefits and non-expense allowances from its payroll calculations, in contravention of the Code, and KMC's exclusion in calculating pensionable earnings, in contravention of the methodology established by the Pension Legislation, their inappropriate exclusion from the calculation of contributions to the Pension Plan would appear consistent with KMC's improper employee pay practices and pattern of misrepresentation.
40. By failing to utilize the established formula for the computation of pensionable earnings, KMC reduced its contributions to the Pension Plan and thereby lessened the retirement savings of the Representative Plaintiff and other Class Members.
41. It was a common term of the employment contracts of the Representative Plaintiff and other Class Members that they would be entitled to a defined contribution pension, with KMC contributing an amount equal to Five Percent (5%) of the employee's pensionable earnings to the Pension Plan. The Representative Plaintiff's and other Class Members' labour and employment was the consideration for the defined contribution pension that would be payable upon their retirement, or other event triggering entitlement.
42. The Pension Plan was principally funded through contributions made by KMC in lieu of salary or wages throughout the Representative Plaintiff's and other Class Members' employment with KMC. KMC's contribution of Five Percent (5%) of the employee's pensionable earnings towards the Pension Plan constitutes deferred compensation earned by the Representative Plaintiff and other Class Members in the course of their employment.
43. KMC, as the employer of the Representative Plaintiff and other Class Members, had a contractual obligation to the Representative Plaintiff and other Class Members to ensure that KMC contributed a full Five Percent (5%) of the employee's pensionable earnings towards the Pension Plan.
44. As the administrator of the Pension Plan, KMC had a contractual and fiduciary obligation to the Representative Plaintiff and other Class Members to correctly calculate their pension contributions and ensure that the Representative Plaintiff and other Class Members receive the correct pension contribution towards their Pension Plan, in addition to being fully apprised as to all actions and decisions being undertaken by KMC as the administrator of the Pension Plan.
45. By improperly calculating employer's pension contribution by failing to use the established formula for pensionable earnings and thereafter failing to remit the appropriate employer pension contribution to the Representative Plaintiff's and other Class Members' Pension Plan, KMC has not honoured its contractual and fiduciary obligations to the Representative Plaintiff and other Class Members under the Pension Plan.
46. KMC breached the terms of the contract. The particulars of the breach include:

- a. failing to accurately calculate the employer pension contribution and failing to remit the correct pension contribution owed to the Representative Plaintiff and other Class Members, pursuant to the Pension Plan;
 - b. failing to provide the Representative Plaintiff and other Class Members with accurate and timely administration information regarding their pension contributions;
 - c. failing to ensure that the information and computations of pension contributions provided by KMC, as the administrator, and to ensure the correct amount of pension contributions were paid to the Representative Plaintiff and other Class Members pursuant to the Pension Plan; and
 - d. failing to act in accordance with the spirit, purpose and terms of the Pension Plan.
47. KMC failed to correctly interpret and apply the provisions of the Pension Plan by incorrectly calculating the pension contributions. By failing to use the Pension Legislation and their computation methodology, KMC favoured its own interests and acted contrary to the terms of the Pension Plan. KMC's interpretation and application of the pension computation methodology is inconsistent with a practical and purposive interpretation of the Pension Plan and is incorrect on its face.
48. Alternatively, the doctrine of *contra proferentem* applies to the interpretation of the Pension Plan. The doctrine provides that where a contractual provision is sufficiently ambiguous, it will be construed against the party responsible for drafting and tendering the contract. KMC drafted the terms of the Pension Plan. To the extent that there is any ambiguity in the relevant provisions of the Pension Plan, the ambiguity should be resolved in favour of the Representative Plaintiff and other Class Members.
49. Furthermore, at all material times, the pension funds were to be held in trust by KMC, as the administrator, in favour of the Representative Plaintiff and other Class Members, for whom those pension funds are exclusively held.
50. As the administrator, KMC administered the pension funds as trustee, pursuant to the Pension Plan, the declaration of trust and the Alberta Pension Act, subsection 58(1), and as such its actions represent a breach of trust and fiduciary duty unto the Representative Plaintiff and other Class Members.

IV. ~~Individual Subclass Claims~~– Inadequacy of Severance Pay

51. In addition to KMC's approach to their offering of common law severance pay to employees terminated without cause would appear grossly inadequate and inconsistent with applicable case law.
52. Because of the unequal power and financial position that KMC enjoys with respect to terminated Subclass Members, as with the Representative Plaintiff, it is to KMC's substantial advantage to offer little or no common law severance pay to its terminated employees. The time and cost of individual litigation has made pursuing common law severance pay that is in line with court precedent largely untenable for terminated

employees, while employers have an economic advantage of putting forth an offer of little or no common law severance pay.

53. The financial economics of offering only a fraction of court precedent as to common law severance pay to terminated employees is indisputable, especially when combined with an employer's requirement of confidentiality as to any payment of eight (8) weeks of termination pay in lieu of notice common law severance pay, as reflected by KMC's 'Release and Agreement,' which protects KMC against the dissemination of knowledge as to what KMC might be prepared to pay by way of common law severance pay where a terminated employee seeks an amount that is more in line with court precedent as to common law severance pay.
54. This is discernable from the severance pay offer that was presented to the Representative Plaintiff, where KMC sought to offer Wade only ~~a further~~ Five Thousand Dollars (\$5,000.00), which apparently represents the amount of severance pay that KMC deemed appropriate for over twenty (20) years of service to the company.
55. This is in stark contrast to the typical severance pay for long serving employees working in and around Fort McMurray for large companies in the petroleum sector, which was made even more acute as a result of the downturn in ~~Alberta Alberta's~~ petroleum sector and the Covid-19 Coronavirus pandemic; ~~The Covid-19 Coronavirus pandemic in conjunction with current market conditions will invariably make making~~ it that much more difficult to find comparable employment such that the significance of severance pay ~~is was~~ elevated, and not lessened.
56. As such, the applicable multiplier for calculating severance pay should be not less than one (1) ~~month~~ month's wages per year of service, which is the typical severance pay for long serving employees working in and around Fort McMurray for large companies in the petroleum sector, with the multiplicand being ~~Wade's the Representative Plaintiff's or Subclass Member's~~ wages for the reasons set forth hereinabove.
57. Given that KMC's And this would not appear to be an isolated incident, but more likely the norm, with KMC offering little to no common law severance pay offer is so far outside the norm, especially considering to their terminated employees, such that the Subclass Members have been knowingly denied the full amount of common law severance pay amounts that it did they were entitled to, with KMC having set up largely insurmountable, or exceedingly costly, barriers to its attainment, fully understanding the financial value associated with commencing with an offer of little or no common law severance pay out after another and aggressively challenging time, namely the Fort McMurray fires of 2016 the efforts of their former employees to rectify this deficiency, which runs contrary to established legal precedent and KMC's own knowledge thereof, the nature of this offer which should also result in significant punitive and exemplary damages being awarded thereupon.

V. Representative Plaintiff's Particulars

58. In 2000, Wade became an employee of the Defendant, in the Province of Alberta. Wade was employed by the Defendant, to work as a mechanic, and in 2007 was promoted to the role of Senior Maintenance Coordinator, under their terms and in exchange for various forms for compensation.

59. Prior to, during and after Wade's employment with the Defendant, the Defendant repeatedly stated and/or inferred that he would be/was being/had been paid pursuant his contract(s) of employment (the "Contracts") and/or in compliance with all applicable legislation and regulations, including the Alberta Law and the Pension Legislation; however, at no time did the Defendant advise Wade nor provide him with any document(s) that state, or otherwise set forth, his minimum pay and records-related entitlements, including employment records and Statutory Pay, as established by his Contracts and the Alberta Law nor his minimum entitlements established by the Pension Legislation.
60. The Defendant never informed Wade of their trust obligations, as trustee, to him, the beneficiary.
61. The Defendant and Wade entered into the Contract.
62. Throughout Wade's employment for the Defendant, Wade met the Defendant's obligations for which he received certain compensation.
63. The Defendant provided Wade with Base Remuneration in the form of base hourly rate and/or base salary ("Base Remuneration").
64. In addition to Base Remuneration, the Defendant provided Wade with Additional Wage Components (with some being periodically changed and/or recharacterized during the tenure of my employment) that included:
- a. payments received from the Defendant (as part of their Performance Incentive Program (PIP)) in the form of performance incentives / bonuses;
 - b. payments received from the Defendant in the form of trade premium, such as JUMP;
 - c. payments received by from the Defendant (as part of their Resident Retention pay program) in the form of resident retention payments;
 - d. payments made from the Defendant, in the form of employer contributions and/or premiums, into various private group benefit and/or insurance plans, in his name and for his benefit;
 - e. payments made from the Defendant, in the form of employer contributions and/or premiums, into various public benefit and/or insurance plans, including the Canada Pension Plan and Employment Insurance, in his name and for his benefit; and
 - f. payments made from the Defendant, in the form of employer contributions and/or premiums, into the Pension Plan, in his name and for his benefit; and/or
65. Each of Wade's Additional Wage Components were:
- a. pecuniary (monetary) benefits in the form of pay and/or remuneration for work;
 - b. a condition and/or term of his employment; a consideration (in exchange) for work, an inducement to accept employment, an incentive to work and/or an incentive to continue employment/work; earned and/or contractual;

- c. determined based on the Defendant's established and approved formulas; significant/sizable in amount; and paid on a regular basis over a long period of time; and/or
 - d. related to hours of work, production and/or efficiency.
66. The Defendant provided Wade with a Pay Statement every 2 weeks, bi-weekly (the "Pay Period").
67. The Defendant provided Wade with Pay Statements that:
- a. provided his base hourly rate for the Pay Period ("Base Rate"), but excluded a wage rate for the Pay Period comprised of his Base Rate and any of his Additional Wage Components for the Pay Period;
 - b. provided an overtime rate of 1.5 times his Base Rate for the Pay Period;
 - c. excluded the various employer contributions from his earnings;
 - d. did not state his wages for the Pay Period nor state which components listed on the Pay Statement were his wages for the Pay Period;
 - e. stated his overtime pay for the Pay Period based on the number of overtime hours worked in the Pay Period multiplied by a rate of 1.5 times his Base Rate for the Pay Period;
 - f. stated his vacation pay for the Pay Period based on the number of vacation hours taken in the Pay Period multiplied by his Base Rate for the Pay Period;
 - g. stated his general holiday pay for the Pay Period based on the total number of hours worked in the Pay Period multiplied by his Base Rate for the Pay Period multiplied by 4%;
 - h. stated his pensionable earnings for the Pay Period based on the total number of hours worked in the Pay Period multiplied by his Base Rate for the Pay Period;
 - i. stated that his contributions to the Pension Plan on his behalf were 2% of his pensionable earnings for the Pay Period based on the total number of hours worked in the Pay Period multiplied by his Base Rate for the Pay Period;
 - j. stated that its employer contributions to the Pension Plan on his behalf were 5% of his pensionable earnings for the Pay Period based on the total number of hours worked in the Pay Period multiplied by his Base Rate for the Pay Period.
68. The Defendant included and/or used the information within the Pay Statements it provided to Wade in other documents it provided to him and other documents provided to him by other (government) entities.
69. Wade relied on the Pay Statements, and related documents, that stated and/or inferred to him that:

- a. the Defendant was not required to inform him of all his earnings components for the Pay Period on his Pay Statements;
 - b. the Defendant was not required to inform him which earnings components for the Pay Period were wages on his Pay Statements;
 - c. the Defendant was not required to include his Additional Wage Components in the determination of his wages;
 - d. the Defendant was not required to report his wages, that included any or all of his Additional Wage Components, for the Pay Period on his Pay Statements;
 - e. the Defendant was not required to report his wage rate, that included any or all of his Additional Wage Components, for the Pay Period on his Pay Statements;
 - f. the Defendant was not required to report his overtime rate, that included any or all of his Additional Wage Components, for the Pay Period on his Pay Statements;
 - g. the Defendant could pay him overtime pay based on the number of overtime hours worked in the Pay Period multiplied by a rate of 1.5 times his Base Rate for the Pay Period and report these amounts on his Pay Statements and other related documents including those to government entities;
 - h. the Defendant could pay him vacation pay based on the number of vacation hours taken in the Pay Period multiplied by his Base Rate for the Pay Period and report these amounts on his Pay Statements and other related documents including those to government entities;
 - i. the Defendant could pay him general holiday pay for the Pay Period based on the total number of hours worked in the Pay Period multiplied by his Base Rate for the Pay Period multiplied by 4% and report these amounts on his Pay Statements and other related documents including those to government entities;
 - j. his pensionable earnings for the Pay Period were based on the total number of hours worked in the Pay Period multiplied by his Base Rate for the Pay Period, and that he could only contribute 2% of this pensionable earnings amount to the Pension Plan on his behalf for the Pay Period;
 - k. his pensionable earnings for the Pay Period were based on the total number of hours worked in the Pay Period multiplied by his Base Rate for the Pay Period, and that the Defendant need only contribute 5% of this pensionable earnings amount to the Pension Plan on his behalf for the Pay Period.
70. The Defendant paid overtime pay to Wade based on the number of overtime hours worked in the Pay Period multiplied by a rate of 1.5 times his Base Rate for the Pay Period.
71. The Defendant paid vacation pay to Wade based on the number of vacation hours taken in the Pay Period multiplied by his Base Rate for the Pay Period.

72. The Defendant paid general holiday pay to Wade based on the total number of hours worked in the Pay Period multiplied by his Base Rate for the Pay Period multiplied by 4%.
73. Wade only contributed 2% of his pensionable earnings per Pay Period to the Pension Plan on his behalf based on a pensionable earnings amount derived from his total number of hours worked in the Pay Period multiplied by his Base Rate for the Pay Period.
74. The Defendant only contributed 5% of his pensionable earnings per Pay Period to the Pension Plan on his behalf based on a pensionable earnings amount derived from his total number of hours worked in the Pay Period multiplied by his Base Rate for the Pay Period.
75. On September 28, 2020, Wade was terminated by the Defendant.
76. Wade was provided with a termination letter, together with a Release Agreement, that indicated that he was being terminated effective immediately and that he would receive an amount of termination pay in lieu of notice. This documentation repeatedly stated and/or inferred that the Defendant had and was adhering to statutory requirements and/or legal principles, and that the Defendant was "prepared to offer" Wade a "severance payment", that was less than his typical bi-weekly earnings, to "help you transition to your next career opportunity" on the condition that he signed a Release Agreement that sought to have Wade waive all past, current and future liability of the Defendant, including any monies owed to him, as detailed herein, and any severance payment/reasonable notice that may be available to him.
77. Wade did not sign the Release Agreement.

Damages:

78. As a result of the events described herein, including the failure to pay the full statutory amount of overtime pay, the failure to pay the full statutory amount of general holiday pay, the failure to pay the full statutory amount of general holiday pay when working, the failure to pay the full amount of vacation pay, the failure to pay the full statutory amount of vacation pay on termination of employment, the failure to remit the appropriate employer contribution towards the employees' defined contribution pension plan, and the non-payment and failure to pay Terminated Subclass Members the full amount of severance pay as derived from industry practice, applicable case precedent, ~~the current situation as to the Alberta petroleum industry and the Covid-19 Coronavirus pandemic,~~ the Representative Plaintiff and the Class Members have suffered losses in the Tens of Millions of Dollars, which amounts were fully earned and were either due and payable in accordance with the Code and common law precedent or would have been based on calculations derived from the correct preceding statutory calculations.
79. The Representative Plaintiff seeks on his own behalf, and on behalf of the Class Members, punitive, aggravated and exemplary damages. The Defendant knowingly and purposefully breached each Class Member's Contracts, Alberta Law and Pension Law in a systemic and unconscionable manner, on a comprehensive scale, and on a continuing basis. Furthermore, the Defendant's deceptive conduct pertaining to its breaches of the duty of good faith and honest contractual performance and fraudulent actions are separate and systemic actionable wrongs. The Defendant breached their contractual and statutory obligations to Class Members because of their desire to maximize profits. The Defendant has shown a callous disregard and complete lack of care for Class Members and their

rights as detailed herein. The Defendant was and continues to be aware of the consequences of their conduct and the damage such conduct has caused and continues to cause Class Members. The principle of deterrence is needed in order to discourage the Defendant and other companies from future misconduct. The Representative Plaintiff pleads that only an award of punitive, aggravated and exemplary damages will prevent the Defendant from continuing their unlawful conduct as particularized herein.

80. The Representative Plaintiff and Class Members claim interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1 as amended from time to time.
81. In the opinion of the Representative Plaintiff and Class Members, the trial of the within action will not exceed 25 days.
82. The Representative Plaintiff and Class Members propose that the trial of this action be held at the Law Courts Building, in the City of Edmonton, in the Province of Alberta.
83. The Representative Plaintiff and Class Members plead and rely on the *Class Proceedings Act*, R.S.A. 2003, c. C-16.5, the *Alberta Rules of Court*, Alta. Reg. 124/2010, the *Alberta Employment Standards Code*, R.S.A. 2000, c. E-9, the *Canada Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), the *Canada Pension Plan*, R.S.C. 1985, c. C-8, and the Alberta Employment Pension Plans Act, R.S.A. 2012, c. E-8.1, the Interpretation Act, RSA 2000, c I-8, and the Limitations Act, RSA 2000, c I-12.

Remedy sought:

84. The Representative Plaintiff and the Class Members seek to have this claim certified as a class proceeding under the CPA and claim the following from KMC:
 - a. Appointment of Wade as the representative plaintiff;
 - b. General and special damages in an amount of not less than Ten Million Dollars, or such further amount to be proven at trial;
 - c. Punitive, aggravated and exemplary damages in an amount of not less than Five Million Dollars or such further amount to be proven at trial;
 - d. An order pursuant to section 30 of the CPA directing an aggregate monetary award, if appropriate, as to the damages pertaining to the Class;
 - e. An order pursuant to section 32 of the CPA allowing for the use of standard claims forms or other documentary evidence or such other procedures as warranted under the circumstances;
 - f. An order directing KMC to preserve and disclose to the Representative Plaintiff or his solicitor all records, in any form, relating to the identification of Class Members and their employees' wages, overtime pay, general holiday pay, general holiday pay when working, vacation pay, vacation pay on termination of employment and severance pay of the Class Members, and KMC's contributions to the Pension Plan, together with any communications or discussions relating thereto;

- g. An order pursuant to section 33 of the CPA that judgment be paid by KMC into a common fund and distributed to the Class Members in an appropriate manner as directed by the Court;
- h. An order directing that KMC specifically perform its calculation of the Class Members' ~~its employees'~~ overtime pay, general holiday pay, general holiday pay when working, vacation pay, vacation pay on termination of employment, termination pay in lieu of notice and severance pay in compliance with their Contracts and the Code and, in particular, that KMC accurately calculate their employees' wages in conformity with their Contracts and the Code and applicable court precedent, and that KMC perform its Pension Plan contribution calculations in conformity with the Pension Legislation;
- i. An order for KMC to provide a complete and independent audit of all former and current employees' overtime pay, general holiday pay, general holiday pay when working, vacation pay, vacation pay on termination of employment, termination pay in lieu of notice and severance pay, and KMC's contributions to the Pension Plan, including amounts actually paid, amounts due but unpaid pursuant to the Code or the Pension Act, as the case may be, and accrued interest on unpaid amounts;
- j. An order for KMC or their solicitors to not release any asset sale proceeds unless said distribution provides for an appropriate withholding of the estimated damages arising from this Action and free of any supervening priority, whether currently existing or likely contemplated;
- k. A declaration that the provisions of the Code were incorporated as express or implied terms of the Contracts and that Defendant would pay each Class Member Statutory Pay pursuant the Code;
- l. A declaration that each Class Member's respective Additional Wage Components were part of their wages;
- m. A declaration that KMC has breached their contracts of employment with each of the Class Members by failing to pay them their Statutory Pay based on their wages; failing to provide them with Pay Statements that included their wage rate, overtime rate, earnings, Statutory Pay amounts and other employment records entitlements pursuant their Contracts and the Alberta Law, failing to report and make contributions to their Pension Plans pursuant their Contracts and the Pension Legislation, and misleading them about the performance of their contracts;
- n. A declaration that Defendant engaged in a policy or practice of avoiding or disregarding compliance with their Contracts; the Alberta Law and the Pension Legislation;
- o. A declaration that the terms and conditions of the Contracts with each Class Member which contravenes provisions of the Code which prohibit contracting out of employment standards are unenforceable, against public policy and void;
- p. A declaration that KMC has breached their obligation to act in good faith, trust and their fiduciary duty in performance of their contracts with the Class Members;

- q. A declaration that KMC has breached their statutory obligations under the Code and the Pension Legislation;
- r. A declaration that the Release Agreement is against public policy and void;
- s. Costs of this action on a solicitor-client, full indemnity basis, or such other basis as this Honorable Court deems appropriate;
- t. Prejudgment and postjudgment interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1, or on such other basis as this Honourable Court may allow;
- u. A declaration Defendant was unjustly enriched to the deprivation of the Class Members without juristic reason;
- v. A declaration that Defendant was negligent in the performance of the Contracts of the Class Members and/or statutorily negligent;
- w. An Interim and Final Mandatory Order for specific performance directing that Defendant comply with the Alberta Law and the Pension Legislation, in particular to advise Class Members of their minimum entitlements to Statutory Pay, pursuant to their Contracts and the Code; and their contributory entitlements to the Pension Plan pursuant to their Contracts and the Pension Legislation; and to ensure that the Class Members' are appropriately compensated for any Statutory Pay owed, at a rate equal to or above the minimum requirements for employees pursuant to their Contracts and the Code, and employer contributions to the Pension Plan owed, at a rate equal to or above the minimum requirements for employees pursuant to their Contracts and the Pension Legislation;
- x. A declaration that Defendant's actions constituted negligent and/or fraudulent misrepresentation, fraud, deceit, and/or fraudulent concealment against Class Members;
- y. Costs of administering the plan of distribution of the recovery of this Action under s. 33(6) of the CPA, including the costs of notice associated with the distribution and fees payable to a person administering the distribution, plus applicable taxes; and
- z. Such further and other relief as may be required pursuant to the CPA or otherwise, or as this Honourable Court deems just and proper in the circumstances.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of ~~Queen's~~ King's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

This is **Exhibit "B"** referred to in the Affidavit
of DANIEL KLEMKE sworn before me
on the 16 day of November, 2025.



A Commissioner for Oaths in and for
the Province of Alberta

Zachary Soprovich
Barrister & Solicitor

Your Application has been scheduled by the clerk.

Date: Nov 20, 2025 @ 10:00

Location: Civil Justice Chambers

In person: 1A Sir Winston Churchill Square,
Edmonton, AB T5J 0R2

Form 27

[Rule 6.3, 7.2 and 10.52(1)]

COURT FILE NUMBER	2103-02652
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFF / APPLICANT	WADE WILSON
DEFENDANT / RESPONDENT	KMC MINING CORPORATION
	Proceeding under the <i>Class Proceedings Act</i> , SA 2003, c C-16.5
DOCUMENT	APPLICATION FOR SUMMARY JUDGMENT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Neufeld Legal Professional Corporation 77 Tuscany Ridge Mews NW Calgary, Alberta T3L 3B7 Attention: Christopher Neufeld Telephone: 403-400-4092 Email: chris@neufeldlegal.com
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Brought under the *Alberta Rules of Court* (Rule 7.2)

NOTICE TO RESPONDENT: KMC MINING CORPORATION

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date:

Time:

Where:

Before Whom:

Go to the end of this document to see what you can do and when you must do it.

Clerk's Stamp



Remedy claimed or sought:

1. Wade Wilson, as the proposed representative plaintiff, seeks an order in the nature of summary judgment:
 - a. Certifying this action as a class proceeding pursuant the *Class Proceedings Act*, SA 2003, c C-16.5 (the “CPA”);
 - b. Determining that the pleadings disclose multiple causes of action, including breach of contract, (including breach of duty of good faith and honest contractual performance), unjust enrichment, negligence, breach of trust, breach of fiduciary duty and fraud and/or fraudulent concealment;
 - c. Defining the “Class” in this class proceeding, as per **Appendix “A”** to this application (or as may be amended);
 - d. Stipulating (identifying) the common issues for trial (or summary judgment) in this class proceeding, as per **Appendix “B”** to this application (or as may be amended);
 - e. Determining a class proceeding would be the preferable procedure for a fair and efficient resolution of the common issues;
 - f. Appointing Wade Wilson as the representative plaintiff in this class proceeding;
 - g. Approving the litigation plan put forward by the proposed representative plaintiff, as per **Appendix “C”** to this application (or as may be amended);
 - h. Granting costs of this application to the proposed representative plaintiff;
 - i. Providing such case management directions as may be necessary to move this action forward;
 - j. In the alternative, the proposed representative plaintiff seeks directions from the Court for the scheduling of a summary trial in the event the Court finds that an assessment of any pertinent matter is not feasible on the record before the Court;
 - k. Such further and other relief as counsel may request and this Court may permit.

Grounds for making this Application:

2. This Application is brought by the proposed representative plaintiff on the following grounds:

- a. *Alberta Rules of Court*, Alta Reg 124/2010 ("**ARC**"), Rule 7.3(1)(a) and (c), in conjunction with Rule 7.2(b) and under their purpose and intention under Rule 1.2.
- b. The CPA, sections 2, 5, 7, 8, 9, 9.1, 20 and 30;
- c. The nature of the claims brought on behalf of the Class are as set out in the Amended Amended Statement of Claim (or as may be amended);
- d. The pleadings disclose multiple causes of action, including breach of contract, (including breach of duty of good faith and honest contractual performance), unjust enrichment, negligence, breach of trust, breach of fiduciary duty and fraud and/or fraudulent concealment, pursuant to s.5(1)(a) of the CPA;
- e. There is an identifiable Class of 2 or more persons as identified in the pleadings pursuant to s.5(1)(b) of the CPA;
- f. The claims of the Class raise common issues of law and fact as disclosed in the pleadings pursuant to s.5(1)(c) of the CPA;
- g. A class proceeding is the preferable procedure for the fair and efficient resolution of the common issues pursuant to s.5(1)(d) of the CPA as it will avoid duplication of fact, finding and legal analysis while achieving the public policy aims of access to justice, judicial economy, and behavioural modification;
- h. The pleadings disclose that the proposed representative plaintiff will fairly and adequately represent the interests of the Class pursuant to s.5(1)(e)(i) of the CPA;
- i. The proposed representative plaintiff has prepared a litigation plan, attached hereto as Appendix "C", which sets out a workable method of advancing the action on behalf of the proposed Class and notifying the Class Members pursuant to s.5(1)(e)(ii) of the CPA;
- j. The proposed representative plaintiff does not have, in respect of the common issues, interests that are in conflict with the interests of the other prospective Class Members pursuant to s.5(1)(e)(iii) of the CPA;
- k. Such further and other grounds as may be advanced at the hearing of this application.

Material or evidence to be relied on:

3. The material or evidence to be relied on includes:

- a. The pleadings and other materials filed within this action;
- b. The Affidavit of Records, served on July 28, 2025;
- c. The Supplemental Affidavit of Wade Wilson, to be filed;
- d. The transcripts of any cross examinations on affidavits in support;
- e. The Brief of Law of the Applicant; and
- f. Such further and other materials and evidence as counsel considers advisable and this Honourable Court may permit.

Applicable rules:

4. The applicable rules include:

- a. Rules 1.2 -1.4, 2.6, 2.9, 6.3, 6.9, 7.2, 7.3 and 10.52 of the ARC;
- b. Such further and other Rules as counsel may advise and that this Honourable Court may permit.

Applicable Acts and Regulations:

5. The applicable Acts and Regulations include:

- a. The CPA;
- b. The *Employment Standards Code*, R.S.A. 2000, c. E-9, as amended;
- c. The *Interpretation Act*, RSA 2000, c I-8, as amended;
- d. The *Limitations Act*, RSA 2000, c L-12, as amended;
- e. The *Canada Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended;
- f. The *Canada Pension Plan*, R.S.C. 1985, c. C-8, as amended;
- g. The *Alberta Employment Pension Plans Act*, R.S.A. 2012, c. E-8.1, as amended; and

- h. Such further and other Acts and Regulations as counsel may advise and this Honorable Court may permit.

Any irregularity complained of or objection relied on:

6. None.

How the application is proposed to be heard or considered:

7. In person before the presiding Justice in Chambers as directed by the Clerk of the Court.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Appendix A

Proposed Class

as of September 15, 2025

All employees and former employees (including their estates, executors, guarantors and personal representatives) of KMC Mining Corporation, that were non-unionized, from September 15, 2000, until notice is delivered to the Class.

Appendix B

Proposed Common Issues

as of September 15, 2025

1. As to the Defendant's employee compensation policy, which forms of compensation, besides base salary/hourly pay, are wages?
2. Is the Defendant liable in contract, unjust enrichment, negligence, trust, fraud and, or fraudulent concealment to implement and maintain an employment compensation policy that establishes which forms of compensation are wages so that:
 - (a) the Class Members received their applicable wage-related entitlements including those related to vacation pay, general holiday pay and employment records?
 - (b) the Overtime Subclass Members received their applicable wage-related entitlements including those related to overtime pay and employment records?
 - (c) the Terminated Subclass Members received their applicable wage-related entitlements, and maintained and/or represented their ability to pursue their contractual and common law entitlements, and thereby made the Release Agreements against public policy and void?
3. As to the Defendant's employee pension policy, which forms of compensation, besides base salary/hourly pay, are pensionable earnings?
4. Is the Defendant liable in contract, unjust enrichment, negligence, trust and, or fiduciary duty to implement and maintain an employment pension policy that establishes which forms of compensation are pensionable earnings so that the Class Members received their applicable pensionable earnings-related employee pension entitlements?

APPENDIX C

LITIGATION PLAN

WADE WILSON V. KMC MINING CORPORATION

as of September 15, 2025

DEFINITIONS

1. The following defined terms apply:

- (a) **“Action”** means this proposed class proceeding, Court File No. 2103-02652, commenced in the **Court**;
- (b) **“Administrator”** means a person appointed by the **Court** to carry out the functions described in the **Plan**;
- (c) **“Applicable Employment Standards Legislation”** means the legislation governing wages and earnings, including but not limited to the *Employment Standards Code*, R.S.A. 2000, c. E-9, as amended, and the applicable regulations thereto;
- (d) **“Applicable Pension Legislation”** means the legislation governing pensions, including but not limited to the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended; the *Canada Pension Plan*, R.S.C. 1985, c. C-8, as amended; the *Employment Pension Plans Act*, R.S.A. 2012, c. E-8.1., as amended, and the relevant regulations thereto.
- (e) **“Claim Form”** means a claim form, in the form to be approved by the Court, to be completed by the **Class Members** and submitted to the **Administrator** in order for the **Class Members** to participate in the procedure described herein;
- (f) **“Claims Deadline”** means the date by which each **Class Member** must file a **Claim Form**;
- (g) **“Class Counsel”** means the law firm of Neufeld Legal P.C.;
- (h) **“Class”** and **“Class Members”** means, collectively:

All employees and former employees (including their estates, executors, guarantors and personal representatives) of KMC, that were non-unionized, from September 15, 2000, until notice is delivered to the Class;

- (i) **“Court”** means the Alberta Court of King’s Bench;
- (j) **“CPA”** means the Alberta *Class Proceedings Act*, R.S.A. 2003, c. C.16-5, as amended;

- (k) **"Employee(s)"** means all persons who are employed or have been employed by KMC and are **Class Members**;
- (l) **"KMC"** means Defendant KMC Mining Corporation;
- (m) **"Notice"** means the notice to the **Class** of the certification of the **Action** as a class proceeding;
- (n) **"Notice Program"** means the method of distributing the **Notice** described in paragraph 24(d);
- (o) **"Plan"** means this litigation plan;
- (p) **"Referee"** means a person appointed by the Court to carry out the functions described in the **Plan**;
- (q) **"Resolution Notice"** means the notice of resolution of the common issues;
- (r) **"Statement of Opposition"** means Defendant's concise statement of material facts responding to a **Claim Form**;
- (s) **"Website"** means the website developed and maintained by **Class Counsel** at www.employeeelawyer.ca.

OVERVIEW

2. This Plan contemplates a determination of eligibility and an assessment of damages for each Class Member after the determination of the common issues.

CLASS COUNSEL

3. Class Counsel is the law firm of Neufeld Legal P.C. Class Counsel has the requisite knowledge, skill, experience, personnel and financial resources to prosecute this class action to conclusion.

4. Class Counsel intends to add other lawyers and other professionals to their complement if they consider it necessary. These other professionals may be paid on a contingency basis and Class Counsel intends to seek Court approval to have their usual fees increased by the multiplier, if any, which will be applied to Class Counsel's base fees.

5. Class Counsel anticipates that prosecuting this Action will require:

- (a) reading, organizing, profiling, scanning, managing and analyzing thousands of documents; and,

- (b) legal arguments with respect to the Applicable Employment Standards Legislation, the Applicable Pension Legislation, pertinent case law and their application to KMC's payments to its Employees.

CLASS DEFINITION

- 6. Plaintiff seeks to represent a Class defined as follows:

All employees and former employees (including their estates, executors, guarantors and personal representatives) of KMC, that were non-unionized, from September 15, 2000, until notice is delivered to the Class;

- 7. Together with the Class the Plaintiff seeks to represent 2 proposed subclasses of Class Members consisting of:

- a. All employees and former employees (including their estates, executors, guarantors and personal representatives) of KMC, that were non-unionized, that received overtime pay and/or received pay for hours worked in excess of their regular hours worked (the "Overtime Subclass Members");

- b. All former employees (including their estates, executors, guarantors and personal representatives) of KMC, that were non-unionized, who were terminated by KMC without cause (the "Terminated Subclass Members").

REPORTING TO AND COMMUNICATING WITH THE CLASS MEMBERS

- 8. Class Counsel has begun the process of developing a confidential database of individuals who were Employees of KMC. The names, last known address and other means of communication with the Employees of KMC are maintained by or are in the records of KMC, in addition to the records maintained by KMC's payroll service provider.

- 9. Class Counsel created the Website, which will contain information about the status of the action and explains how a class action operates. Copies of some of the publicly filed Court documents, Court decisions and notices, and other information relating to the action will be posted on or will be accessible from the Website. This will allow Class Counsel to keep the Class Members, wherever resident, informed of the status of the Action.

- 10. Class Counsel is creating a questionnaire which will permit Class Members to register in confidence with, and provide Class Counsel with, information about the activities and documents related to this Action and the damages of the Class. The questionnaire will also collect information about the Class Members' employment and pay history with KMC.

- 11. The Website also lists the direct-dial telephone number to Class Counsel who is prosecuting this Action.

12. From time to time, Class Counsel will send email updates reporting on the status of the Action directly to members of the Class who have provided their email addresses. They will also post these updates on the Website.

LITIGATION SCHEDULE

13. The Honorable Justice Robert A. Graesser has been appointed as the case management judge to oversee the conduct of this Action.

14. Following certification, Class Counsel will ask Justice Graesser to set a litigation schedule for:

- (a) any other preliminary motions to be brought by any of the parties;
- (b) the exchange of affidavits of records;
- (c) the examinations for discovery, including the location and length of the examinations;
- (d) the delivery of experts' reports; and,
- (e) the trial of the common issues which will include the representative plaintiff's individual claim for damages.

15. Class Counsel and counsel for Defendant will likely request that the litigation schedule be amended from time to time, as required.

ACCESS TO AND PRESERVATION OF EVIDENCE

16. Defendant has been, or will be asked to, preserve and protect all relevant information and business documents, whether in electronic or paper form, including all documents relating to the Class Members' contracts, T4 statements, employee pay statements, pension documentation, termination letters and all other payroll data and information.

PRODUCTION FROM NON-PARTIES

17. If necessary, Plaintiff may pursue motions with respect to the production of documents in the possession and control or power of persons who are not parties to this action, in particular KMC's payroll service provider(s) and pension service provider(s).

DOCUMENT EXCHANGE AND MANAGEMENT

18. Defendant possesses most, if not all, of the documents relating to the common issues, such as the documents relating to the Employees' wages, earnings, pensions and payments. Many of these documents will be produced to Class Counsel through Defendant's affidavits of documents. Additional documents will be produced to Class Counsel through normal production,

cross-examination, and examination for discovery processes. Plaintiff has produced and will continue to produce all documents in their possession.

19. Class Counsel anticipates and is able to handle the intake and organization of the large number of documents that will likely be produced by Defendant. Class Counsel will use data management systems to organize, code and manage the documents.

20. If required, the documents may be maintained on a secure, password-protected website, for the purposes of online access by members of Class Counsel.

21. The same data management systems will be used to organize and manage all relevant documents in the possession of Plaintiff.

PLAINTIFFS' EXPERTS

22. Plaintiff may retain experts as necessary as the Action proceeds.

MEDIATION

23. Plaintiff will participate in mediation or non-binding alternative dispute resolution efforts if Defendant is prepared to do so.

THE FOLLOWING TERMS OF THIS PLAN PRESUPPOSE THAT THE COURT CERTIFIES THE ACTION AS A CLASS PROCEEDING

24. As part of the certification order, the Court will be asked to:

- (a) set an opt-out date that is sixty (60) days after the date of the order certifying the Action as a class proceeding, subject to further direction of the court or written agreement of the parties;
- (b) settle the form and content of the Notice in the form agreed upon by the parties;
- (c) require Defendant to identify the size of the Class, and the names and last known residential home addresses and email addresses for all of the Class Members;
- (d) settle the particulars of the Notice Program as follows:
 - (i) by Class Counsel posting the Notice on the Website and by emailing the Notice to any person who registered with Class Counsel and provided a valid email address;
 - (ii) by Class Counsel sending the Notice to each Class Member whose last known physical address is in the possession of Class Counsel, following the provision by Defendant of the names and last known physical addresses of all Class Members in Defendant's possession; and,

- (iii) by Class Counsel sending the Notice to each Class Member whose last known email is in the possession of Class Counsel, following the provision by Defendant of the names and last known email addresses of all Class Members in Defendant's possession; and,
 - (iv) by Class Counsel publishing the Notice in one Canadian national English language newspapers;
- (e) approve the following opt-out procedure:
 - (i) a person may opt out of the class proceeding by sending a written election to opt-out, including an acknowledgement as to the actual and potential implications of opting out, to a person designated by the Court before a date to be fixed by the Court;
 - (ii) no person may opt out after the expiration of the opt-out period unless there is a reasonable explanation for missing the opt-out period which is acceptable to all counsel, or, alternatively, which is approved by the Court; and,
 - (iii) Class Counsel will receive the written elections to opt out of the class action and, within thirty (30) days after the expiration of the opt-out period, will deliver to the Court and the counsel for Defendant an affidavit listing the names and addresses of all persons who have opted out of this class action;
- (f) order that Defendant is restrained from having any communications with the Class Members regarding the within action during the notice period;
- (g) specify that the personal information, including the names, email addresses, phone numbers and last known residential addresses, of both the Class Members who opt out and do not opt out of this proposed class proceeding be kept confidential;
- (h) specify that no information be provided to Defendant that could facilitate or otherwise assist Defendant in identifying any Class Member's determination to opt out or not opt out of this proposed class proceeding; and,
- (i) order that Defendant not retaliate against any Class Member who choose not to opt out of this proposed class proceedings.

EXAMINATIONS FOR DISCOVERY

25. Class Counsel intend to examine for discovery at least one representative of Defendant and estimates that, subject to undertakings and refusals, these examinations may take up to two (2) days. Counsel for Defendant may examine the Representative Plaintiff.

26. Plaintiff may ask the Court for an order allowing them to examine multiple representatives of the Defendant, if necessary.

CLARIFICATION OF COMMON ISSUES

27. From time to time, Plaintiff may ask the Court for an order to amend, clarify and/or redefine the common issues.

28. Plaintiff will ask the Court to set a date for the trial of the common issues within six (6) months after the completion of examinations for discovery, including the delivery of answers to the undertakings and the resolution of any refusal motions.

29. The findings of fact and conclusions on the common issues and the individual claims of the Representative Plaintiff will permit the judge at the common issues trial to give directions, pursuant to s. 28(3) of the *CPA*, to deal with any remaining individual issues.

DETERMINING THE COMMON ISSUES AT TRIAL

30. This section of the litigation plan will describe how Plaintiff intends to establish eligibility as to (i) their underpayment of overtime pay, general holiday pay, general holiday pay when working, vacation pay and vacation pay on termination of employment (collectively, "**Statutory Pay**") and (ii) the reduction in pension entitlements from the Pension Plan for the Employees of KMC Mining Corporation (the "**Pension Entitlement**") across the Class on a common basis.

31. Plaintiff will lead evidence to establish that (i) each form of Statutory Pay must be determined in accordance with a calculation of wages as is prescribed by paragraph 1(1)(x) of the *Alberta Employment Standards Code*, which is inconsistent with the established practices of Defendant in determining wages and making statutorily appropriate Statutory Pay and (ii) the Pension Entitlement must be determined in accordance with Applicable Pension Legislation, which is inconsistent with the established practices of Defendant in determining pension entitlements.

32. Plaintiff will prove that Statutory Pay and Pension Entitlements were improperly calculated by Defendant based upon the information and documentation published and circulated to the Class Members and the public, which is in contravention of the Applicable Employment Standards Legislation and the Applicable Pension Legislation.

33. Representative evidence from a sampling of employee pay statements, as well as KMC's collective bargaining agreement, will suffice in this case because of the standardization of the process that Defendant undertook with its payroll service provider(s) in calculating and paying Statutory Pay, as will KMC's employee pension materials pertaining to the Class Members' Pension Entitlements.

34. Plaintiff will present a process whereby a corrected calculation as to (i) each Class Members' Statutory Pay might be recalculated in conformity with the Applicable Employment Standards Legislation and (ii) each Class Member's Pension Entitlements might be recalculated

in conformity with the Applicable Pension Legislation, with the exception of the applicable time period for calculating severance pay and any further or additional individual issues, including but not limited to those put forth by Plaintiff.

35. The Class Members' relevant employee pay statements, or alternatively their Revenue Canada T4 Statement of Remuneration, together with such other payroll data (collectively, the "**Pay Statements**"), together with KMC's pension materials related to the Pension Plan for the Employees of KMC Mining Corporation (the "**Pension Materials**"), which are in the possession and/or control of Defendant, should be sufficient to determine the Statutory Pay liability and Pension Entitlement liability of Defendant, save for the applicable time period for calculating severance pay and any further or additional individual issues, including but not limited to those put forth by Plaintiff.

36. Even in the absence of past Pay Statements and Pension Materials for certain Class Members, where both Defendant and the individual Class Members do not possess the subject Pay Statements and/or Pension Materials, the other information and documentation that should be attainable should in all likelihood be sufficient to create mathematical models that will be capable of effectively approximating the amount of Statutory Pay liability and Pension Entitlement liability of Defendant due to those individual Class Members.

37. If the evidence does not fully satisfy the trial judge that liability can be decided once and for all, then the trial judge has ample resources to fashion a process to address the remaining liability issues following the common issues trial.

AFTER THE RESOLUTION OF THE COMMON ISSUES

38. Assuming that the common issues are resolved by judgment in favour of the Class, it will be necessary for the Court to establish and supervise a claims and assessment procedure. The precise structure of the assessment process will depend upon the conclusions reached by the judge at the common issues trial. Defendant who, as a result of the common issues trial may be required to pay monies to some or all of the Class Members, may participate in the process described in the following paragraphs.

39. Plaintiff will ask the Court to:

- (a) determine the specific wage components owing to Class Members for purposes of determining their statutory wage amount pursuant to the *Alberta Employment Standards Code*;
- (b) determine a formula for recalculating the multiplier used in the calculation of the severance payment due to Class Members that are former employees of Defendant or appropriately empower a referee to develop and oversee the implementation of this formula to recalculate the multiplier of severance payments;

- (c) determine the specific pension components owing to Class Members for purposes of determining their Pension Entitlement pursuant to the Applicable Pension Legislation;
- (d) attain from Defendant and all relevant third parties the relevant documentation and information pertaining to the Class Members' wage related payments, including but not limited to employee pay statements, T-4s, pension materials, internal reporting, payroll and pension data and correspondence to the Class Members;
- (e) determine the corrected payment of overtime pay, general holiday pay, general holiday pay when working, vacation pay, vacation pay on termination of employment, termination pay in lieu of notice, severance pay and pension entitlements;
- (f) determine the interest rate(s) and methodology for calculating interest rates that will be payable on past due and unpaid portions of overtime pay, general holiday pay, general holiday pay when working, vacation pay, vacation pay on termination of employment, termination pay in lieu of notice, severance pay and pension entitlements;
- (g) determine the amount of aggravated and punitive damages as against Defendant, related to Defendant's actions as against all the Class Members, as a percentage of the underpayment of Statutory Pay and Pension Entitlements that is due to each of the individual Class Members and is payable to each individual Class Member;
- (h) determine all individual claims against Defendant, including but not limited to the individual claims of the Representative Plaintiff, together with interest and further damages thereon as set forth above;
- (i) determine the legal fees and costs due to Class Counsel on account of the amounts payable to the Class Members, as set out above, which amount should be payable exclusively by Defendant;
- (j) settle the form and content of the Resolution Notice and the Claim Form, including any mathematical formulas for purposes of determining the underpayments of Statutory Pay derived from the information contained in the Pay Statements, as well as the Pension Entitlements;
- (k) set out such further guidelines for Class Members that might enable them to effectively address any concerns that they might have with the process or the calculation of the amounts owed or their submission of additional information and materials for the adjudication of their individual claims;
- (l) order that the Resolution Notice be disseminated substantially in accordance with the Notice Program set out at paragraph 24(d), except that the Notice of Resolution

shall not be mailed to any person who validly opted out in accordance with the procedure set by the certification order;

- (m) set a Claims Deadline by which date Class Members will be required to file their Claim Form, failing which they shall be subject to the calculation methodology established by Class Counsel and Defendant's legal counsel, with the approval of the Court, and the Pay Statements, Pension Materials and other information and documents provided by Defendant;
- (n) appoint an Administrator to oversee and confirm the calculations undertaken by Class Counsel with respect to each Class Member's underpayment of Statutory Pay, Pension Entitlements, interest and damages;
- (o) appoint an Administrator to hold any monies recovered at the common issues trial and to implement this Plan by, among other things, receiving and evaluating Claim Forms in accordance with protocols approved by the Court to pursue such further money that might be owed by Defendant;
- (p) appoint a Referee to decide any issues not decided at the common issues trial, unless such matters should be adjudicated before the Court; and,
- (q) appoint a Class Counsel Representative to represent the interests of the Class in dealing with issues of general application relating to the damages assessment process.

THE CLAIMS PROCESS AND THE ADMINISTRATOR'S ROLE

40. The Claim Form shall serve as a supplement to the Pay Statements and Pension Materials, which together with the employee termination materials and pension documentation that are also in the possession and/or control of Defendant, should be largely sufficient to determine the underpayments of overtime pay, general holiday pay, general holiday pay when working, vacation pay, vacation pay on termination of employment, termination pay in lieu of notice, severance pay and pension entitlements, absent any document or information retention deficiencies of Defendant or its third party suppliers and contractors.

41. The Claim Form will allow for the provision of such additional information and documentation as the individual Class Members may wish to provide or otherwise deem relevant, and shall be equivalent to a statement of claim and affidavit of documents.

42. Class Counsel, Defendant's legal counsel and the Administrator, with the consent of this Court, shall create a methodology that would allow for the recalculation of Statutory Pay and Pension Entitlements through the importation of the information from the Pay Statements, the pension documentation, the Claim Form and where applicable, the information from the individual Class Member's termination and severance materials, to determine the amount of compensation payable to each Class Member for underpayments of overtime pay, general holiday pay, general holiday pay when working, vacation pay, vacation pay on termination of employment, termination

pay in lieu of notice, severance pay and pension entitlements (“**Base Amounts Due to Class Members**”).

43. For payments in excess of \$5,000 that are based upon an individual Class Member’s Claim Form, and not their Pay Statements or KMC’s pension documentation, the Claim Form will be reviewed by the Administrator for eligibility only. Once determined that the Class Member has a potential claim exceeding \$5,000, the Claim Form will be provided directly to a Referee. If the claim is actually less than \$5,000, the Administrator will make a reasoned determination thereon, with no right of appeal.

44. Class Counsel, Defendant’s legal counsel and the Administrator, with the consent of this Court, shall create a methodology for calculating accrued interest that would be payable to each of the individual Class Members based upon the Base Amounts Due to Class Members, utilizing commercially reasonable rates of interest on investment products.

45. Before the Claims Deadline, each claimant that is seeking something further or otherwise beyond what might be determined by their pertinent Pay Statements, pension documentation, and termination and severance materials, must deliver to the Administrator a completed Claim Form with the relevant documents in their possession. Class Members will be encouraged to deliver their Claim Forms and relevant documents electronically.

46. The Administrator will be directed to assist the Class Members in filling out the Claim Form, if they require such assistance.

47. In and with the Claim Form, the claimant will, among other things:

- (a) assert the basis of their eligibility as a Class Member, namely, their employment with Defendant;
- (b) address any issues that are not determined at the common issues trial;
- (c) deliver all relevant documents in their possession and under their control;
- (d) provide details of all facts pertinent to their employment and their compensation; and
- (e) specify how much further compensation the Class Member asserts they are entitled to receive, beyond that which is determinable from the Pay Statements and pension documentation.

48. Electronically, the Administrator will make a copy of each of the Claim Forms and accompanying materials available to the legal counsel for Defendant and the Class Counsel.

49. Legal counsel for Defendant shall have 30 days after receipt of the Claim Form and accompanying material to file electronically with the Administrator a written Statement of Opposition (which cannot exceed one page of written submissions) and all relevant documents in

their possession or under their control (hereinafter a "**Disputed Claim**"). The Statement of Opposition shall be treated as if it is a statement of defence and affidavit of documents, and shall address both eligibility and damages issues. Electronically, the Administrator will make a copy of the Statement of Opposition and any documents delivered by legal counsel for Defendant available to the claimant. The claimant, within 10 days of receipt of the Statement of Opposition, may electronically deliver a written Reply to the Administrator who will, electronically, make it available to Defendant.

50. Electronically, the Administrator will receive the Claim Form, Statement of Opposition, Reply and all other documents unless, in the exercise of its discretion, the Administrator decides to receive documents from a particular Class Member in paper form, because, for example, a Class Member does not have access to a computer with internet capability.

51. The Administrator will undertake the management of all Disputed Claims, which shall be administered separate and apart from the Website.

52. The Administrator shall establish and administer its own internet-based system for the management of the Disputed Claims, which will include a secure section which will require user ID and a password to gain access.

53. Each Class Member who has a Disputed Claim will select a user ID and password which will be disclosed only to the Administrator. This will allow each such Class Member access to the secure section of a database on the Website which is relevant only to their claim. In this secure section, the Class Member might upload such further information and documents which have not already been produced to Class Counsel in furtherance of their Disputed Claim. Or the Administrator may upload the documents that may be transmitted electronically from the Class Member to it.

54. Defendant will select a user ID and password which will be disclosed only to the Administrator. This will allow Defendant access to the secure section of the Administrator's internet-based system which is relevant only to the claim of a specific Class Member. In this secure section, Defendant may review and upload documents and information pertaining to the Disputed Claims.

55. In this secure section, the Administrator and the Referee may communicate with the Class Member and Defendant as to the Disputed Claims and post any written decisions.

CLASS COUNSEL'S ONGOING REPRESENTATION OF THE CLASS MEMBERS

56. Class Counsel may decide to continue to act as the lawyer for a particular Class Member after the common issues trial if requested to do so by the Class Member. The Class Member will be required to pay fees, disbursements and taxes for these services which are not included as part of Class Counsel's contingency fee agreement. If a Class Member retains other lawyers or a representative, the Class Member must pay the fees, disbursements and taxes for their services on whatever basis they privately agree.

THE PROCEDURE FOR RESOLUTION OF THE INDIVIDUAL ISSUES

57. After determining the common issues, the trial judge may be asked to give directions as to the procedure for the determination of the individual issues, which may include holding separate "mini trials" for each Class Member, or may include having a Referee appointed to deal with some of the claims. The type of hearing will depend upon the nature and complexity of the claim and the amount of damages claimed by the individual Class Member.

58. The Court may be asked to authorize a hearing or hearings before the Referee to allow the Class Members and Defendant to adduce general and expert evidence which may be applicable to some or all individual claims.

59. A claimant may appear at the individual stage of the proceedings in person or with counsel or such other representative as he or she may designate in writing. A claimant will be responsible for the cost of such representation. Defendant may appear by counsel or in person.

60. The Court will be asked to approve protocols for the above-referenced process that:

- (a) establish the procedures to be followed;
- (b) direct that there be no examinations for discovery if the claim of the Class Member is less than \$10,000, exclusive of pre-judgment interest;
- (c) limit examinations for discovery of each Class Member to a maximum of two hours and two hours for Defendant if the claim of the Class Member(s) is more than \$10,000 but no more than \$50,000, exclusive of pre-judgment interest;
- (d) direct that the time limits for examinations for discovery may only be exceeded by agreement of the parties or by order of the Referee;
- (e) provide that a Referee should have the power to award pre-judgment interest and costs of each hearing;
- (f) provide that a Referee should have the power to make any order necessary for a fair determination of each hearing; and
- (g) permit the Referee to hear evidence that is generic in nature in an efficient manner to eliminate the need for duplication.

61. Following every hearing, the Referee shall prepare a written report setting out his/her reasons for decision. The Referee will deliver this decision to the Class Member, Defendant and the Administrator by delivering it by mail and email transmission to each of the requisite parties and filing it with the Court. The Referee's report shall be confirmed upon the expiration of 15 days after it is filed with the Court, unless Defendant or the Class Member serves a notice of motion to oppose confirmation of the report within that 15 day period as required by Rule 54.09(1)(b).

THE DISTRIBUTION PROCESS

62. The award made at the common issues trial should be premised on the actual or estimated amount of each Class Member's specific underpayment of Statutory Pay and Pension Entitlement, which would be discernable from the information and materials that would be attainable so as to calculate with a high degree of certainty those particular amounts. Even in the absence of the specific information and materials, it should be possible to estimate those Class Member's underpayment of Statutory Pay and Pension Entitlement with a high degree of certainty, based on the other information and materials that are available when applied to the appropriate mathematical formulas to correct for any missing information or materials.
63. Once specific interest rates are agreed upon and approved by the Court, interest can be calculated as to each Class Member's ascertained underpayment of Statutory Pay and Pension Entitlement and applied thereon.
64. Aggravated, exemplary and punitive damages, legal fees and/or costs, if awarded in the aggregate, can be apportioned to each of the Class Members based upon the proportion of each Class Member's ascertained underpayment of Statutory Pay and Pension Entitlement in relation to all Class Members.
65. The award may be paid to the Administrator, who shall hold the monies in a segregated trust account as the Court directs. The Administrator will not make any distribution to eligible Class Members until authorized to do so by the Court, but Class Counsel may recover a fee if so ordered.
66. Defendant should be ordered to pay the Administrator, or as otherwise directed by the Court, the full award made at the common issues trial upon the determination of each Class Member's ascertained underpayment of Statutory Pay and Pension Entitlement, together with interest, damages, legal fees and costs, and payment thereon be made to the Class Members and Class Counsel.
67. With respect to individual claims of Class Members, Defendant should be ordered to pay to the Administrator the amount of each assessment immediately after each report becomes final. The Administrator shall hold this money in the segregated trust account and invest it as the Court directs. The Court will decide when the Administrator may make payments to Class Members on their individual claims.
68. Each eligible Class Member shall sign such documents as the Administrator may require, in accordance with a protocol approved by the Court, as a condition precedent to receiving any distribution.
69. The Administrator will not make any distribution to eligible Class Members until authorized to do so by the Court.

INSUFFICIENT RECOVERED MONIES

70. In the event that Defendant does not pay all of the assessed damages in full, the Court will be asked to give further directions to determine whether there should be any priorities of payment among eligible Class Members.

CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

71. At the conclusion of the common issues trial, the Court will be asked to fix the amount of Class Counsel fees, disbursements and applicable taxes ("Class Counsel Fees"). Class Counsel will ask the Court to direct the Administrator or Defendant to pay the Class Counsel Fees out of any monies recovered. Class Counsel Fees are a first charge on every recovery.

72. The Court will be asked to fix the costs of the persons appointed to implement and oversee the Plan, such as the Administrator, the Referee, and Class Counsel Representative, and order Defendant to pay these costs.

FINAL REPORT

73. After the Administrator makes the final distribution to Class Members, the Administrator shall make its final report to the Court in such manner as the Court directs and the Court will be asked then to make an order discharging the Administrator.

REVIEW OF THE LITIGATION PLAN

74. The Court may revise this Plan before the determination of the certification motion and/or before and/or after the determination of the common issues at the common issues trial or otherwise. The parties reserve the right to seek an amendment of any of the terms of the Plan.

MOTIONS FOR DIRECTIONS

75. The Administrator, Class Counsel, and Defendant may apply to the Court for direction.