

Vancouver

11-Mar-25

REGISTRY

No. VLC-S-S-228113
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**MICHAEL DEMMER, RODNEY BRUNK,
TIM KEMPTER and WILLIAM WILLIAMSON**

PLAINTIFFS

AND:

**TREVALI MINING CORPORATION,
RICUS GRIMBEEK, BRENDAN CREANEY, JILL GARDINER,
RUSSELL BALL, ALINE COTE, NICK POPOVIC,
JEANE HULL, DAN ISSEROW and RICHARD WILLIAMS**

DEFENDANTS

Brought under the *Class Proceedings Act*, RSBC 1996, c. 50

**NOTICE OF APPLICATION
(APPLICATION FOR CERTIFICATION UNDER THE *CLASS PROCEEDINGS ACT*
FOR SETTLEMENT PURPOSES)**

NAME OF APPLICANT: Plaintiffs, c/o Sage Nematollahi sn@knd.law

TO: Service List

TAKE NOTICE that an application will be made by the applicant to a at the Supreme Court of British Columbia at the courthouse at 800 Smithe Street, Vancouver, B.C. on March 17, 2025 at 10 a.m. for the order(s) set out in Part 1 below.

The applicant(s) estimate(s) that the application will take 3 hours.

This matter is within the jurisdiction of an associate judge.

This matter is not within the jurisdiction of an associate judge.

PART 1: ORDERS SOUGHT

1. an order, on consent, in the form attached as **Schedule “A”** for:
 - a. certification of shareholders’ claim for purposes of a proposed settlement (**“Proposed Settlement”**) on behalf of the affected Securities Claimants, as defined in this Court’s Shareholder Representation Order dated March 29, 2023 (**“Securities Claimants”**) pursuant to the *Class Proceedings Act*, RSBC 1996, c 50 (**“Class Proceedings Act”**);
 - b. approval of the form, content and manner of distribution of the first notice of the proposed settlement (**“First Notice of Proposed Settlement”**); and
 - c. approval of the procedure for Securities Claimants to opt out of the Proposed Settlement, if they wish to do so (**“Opt Out Procedure”**); and
2. such other relief as Counsel may request and this Honourable Court may deem just.

PART 2: FACTUAL BASIS

A. Background

1. This is an application with respect to the Proposed Settlement that was agreed upon in relation to the claim of shareholders of Trevali Mining Corp (**“Trevali”**) advanced in the present Action, and also filed within the authority and in accordance with the Court’s Claims Process Order dated March 29, 2023, which was granted within a related proceeding involving Trevali Mining Corporation under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (**“CCAA”** and **“CCAA Proceedings”**).
2. The Proposed Settlement is the result of extensive, arms-length litigation and negotiation between the Applicants and the Defendants.

3. The events leading to the Proposed Settlement are outlined in the Second Affidavit of Hadi Davarinia, affirmed March 11, 2025, at paras 9-31 (“**1st Davarinia Affidavit**”).
4. The rationale for the Proposed Settlement is outlined in the 1st Davarinia Affidavit at paras 39-65.
5. Class Counsel are of the view that the Proposed Settlement is fair and appropriate to the investors of Trevali who are covered by it, and that it is also consistent with the spirit and goals of the CCAA as well as the *Class Proceedings Act*.
6. On this application, the Applicants seek *inter alia*, certification of their claims under Part 2 of the *Class Proceedings Act* for settlement purposes and approval of certain ancillary matters including a notice of proposed settlement and establishing the opt-out procedure.
7. Should this Court grant the within application, Class Counsel expects that the Applicants will bring an application for final approval of the Proposed Settlement in late-May or early-June.

B. Terms of the Proposed Settlement

8. The terms of the Proposed Settlement are generally consistent with comparable precedents, including the settlements achieved in Imperial Metals securities class action, the Xebec Adsorption Securities class action, and the Northern Dynasty securities class action, which was approved by Justice Kirchner of this Court.
9. The Proposed Settlement provides for the payment of \$2.8 million in full and final satisfaction of the Shareholders’ Claim, inclusive of legal fees, expenses, administration fees, and applicable taxes.
10. The Proposed Settlement provides for full and final releases, which are consistent with the releases provided to the defendants in this type of litigation.

11. The Proposed Settlement provides for the form and the manner of distribution of the First Notice of the Proposed Settlement, consistent with those approved by the Courts in this type of litigation.
12. The Proposed Settlement provides that each Securities Claimant who wishes to opt out may do so by submitting a valid Opt-Out Form, in the form attached as Schedule “C” to the Settlement Agreement within 30 days from the publication of the First Notice of the Proposed Settlement.

PART 3: LEGAL BASIS

A. This Court’s Jurisdiction

1. This Court has jurisdiction to hear and determine this application under section 11 of the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, which provides as follows:

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.¹

2. Further, this Court has jurisdiction to hear and determine this application under section 35 of the *Class Proceedings Act*, which provides as follows:

35 (1) A class proceeding may be settled, discontinued or abandoned only

(a) with the approval of the court, and

(b) on the terms the court considers appropriate.

(2) A settlement may be concluded in relation to the common issues affecting a subclass only

¹ *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, [s 11](#); *Alderbridge Way GP Ltd. (Re)*, 2023 BCSC 1718 at [paras 31-32](#).

(a) with the approval of the court, and

(b) on the terms the court considers appropriate.

(3) A settlement under this section is not binding unless approved by the court.

(4) A settlement of a class proceeding or of common issues affecting a subclass that is approved by the court binds every member of the class or subclass who has not opted out of the class proceeding, but only to the extent provided by the court.

(5) In dismissing a class proceeding or in approving a settlement, discontinuance or abandonment, the court must consider whether notice should be given under section 20 and whether the notice should include

(a) an account of the conduct of the proceeding,

(b) a statement of the result of the proceeding, and

(c) a description of any plan for distributing any settlement funds.²

B. Consent Certification

3. Despite the fact that the defendants consent to certification, the Court must still be satisfied that the claim meets the statutory requirement outlined in section 4(1) of the *Class Proceedings Act* are satisfied.³
4. The Court, however, applies the analysis regarding the certification criteria less vigorously. In the context of consent certification for the purposes of a settlement, the applicant is required to establish “a *prima facie* case that the claim meets the requirements of s. 4 of the” *Class Proceedings Act*.⁴

² *Class Proceedings Act*, [s 35](#).

³ *Charlton v Musashi Bockenau GmbH & Co. KG*, 2024 BCSC 428 at [para 2](#), citing with approval to *Tietz v. BridgeMark Financial Corp.*, 2021 BCSC 25, at [paras 20-24](#).

⁴ *Charlton v Musashi Bockenau GmbH & Co. KG*, 2024 BCSC 428 at [paras 3-4](#), citing with approval to *Haney Iron Works Ltd. v. Manufacturers Life Insurance Co.*, 1998 CanLII 3085 (BC SC), 1998 B.C.J. 2936 (S.C.), [paras 16-17](#).

5. In this case, the applicants readily establish a *prima facie* basis for each of the criteria for certification.
6. **First**, the claim on its face discloses causes of action under sections 131 and 140.3 and 140.5 of the *Securities Act*, and in oppression pursuant to section 227 of *Business Corporations Act*, SBC 2002, c 57 (“**Business Corporations Act**”).
7. **Second**, and on the face of the pleading, there is undoubtedly an identifiable class of 2 or more persons—namely, the Securities Claimants—given Trevali was a publicly-traded company whose securities traded on securities exchanges. The definition of the Securities Claimants is based on objective criteria, by which individuals can determine if they are members of the class. Further, the definition of the Securities Claimants is rationally connected to the proposed common issues.⁵
8. **Third**, the Shareholders’ Claim raises common issues, which for the purposes of the Proposed Settlement are as follows:
 - a. Did disclosure documents issued by Trevali between October 9, 2020 through to August 15, 2022 and described in the Notice of Civil Claim contain misrepresentations concerning Trevali’s corporate governance practices?
 - b. Did the Defendants engage in oppressive conduct by failing to exercise care and oversight to ensure Trevali had, maintained or implemented effective policies and procedures to manage matters concerning health and safety, corporate governance and risk management, and internal control systems, disclosure controls and procedures?
9. **Fourth**, on the face of the pleadings, consent certification under the *Class Proceedings Act* would be the preferable procedure for the fair and efficient

⁵ *Charlton v Musashi Bockenau GmbH & Co. KG*, 2024 BCSC 428 at [para 10](#).

resolution of the common issues. This factor is further evident, bearing in mind that the Proposed Settlement also resolves the Shareholders' Claim within the CCAA proceedings, therefore it is consistent with the restructuring of the affairs of Trevali, and the goals and spirit of the CCAA.

10. **Fifth**, the Applicants are appropriate representative plaintiffs on the face of the pleadings and proceedings filed herein, bearing in mind that this Court previously has appointed them as Representative Shareholders to the Securities Claimants.

C. First Notice of Proposed Settlement

11. "The purpose of the notice is s to inform class members about the impending class action and to ensure they are informed about their ability to object to the settlement or opt out if so desired"; the notice need not be perfect, but it must be sufficient for the Court to ensure that the notice will likely reach all class members, and that its content is understandable such that the class members may make informed decision.⁶
12. The applicable criteria are outlined in sections 19(3)-(4) of the *Class Proceedings Act*, which provide as follows:

(3) The court must make an order setting out when and by what means notice is to be given under this section and in doing so must have regard to the following:

- (a) the cost of giving notice;
- (b) the nature of the relief sought;
- (c) the size of the individual claims of the class members;
- (d) the number of class members;
- (e) the presence of subclasses;

⁶ *Charlton v Musashi Bockenau GmbH & Co. KG*, 2024 BCSC 428 at [paras 19-21](#).

(f) whether some or all of the class members may opt out of the class proceeding;

(g) the places of residence of class members;

(h) any other relevant matter.

(4) The court may order that notice be given by

(a) personal delivery,

(b) mail,

(c) posting, advertising, publishing or leafleting,

(d) individually notifying a sample group within the class, or

(e) any other means or combination of means that the court considers appropriate.⁷

13. The First Notice of Proposed Settlement is consistent with those approved by Courts in this type of litigation, as is the proposed manner of distribution of the First Notice of Proposed Settlement.

14. The First Notice of Proposed Settlement is appropriate, sufficient and workable bearing in mind that a notice was previously issued to the Securities Claimants at the time when the Court granted the Shareholder Representation Order.

15. Further, the First Notice of Proposed Settlement is appropriate, sufficient and workable considering that a further notice will be issued to the Securities Claimants in the future should this Court approve the settlement.⁸

D. Opt-Out and Objection Procedures

16. The Opt-Out Procedure provides for a sufficient opportunity for any Securities Claimant to exclude themselves from the Proposed Settlement should they wish to do so. It is consistent with the opt-out procedures approved by Courts in this type of litigation.

⁷ *Class Proceedings Act*, [s 19](#).

⁸ *Charlton v Musashi Bockenau GmbH & Co. KG*, 2024 BCSC 428 at [para 21](#).

17. The Objection Procedure provides for an opportunity for any Securities Claimant to express their concerns, if any, about the Proposed Settlement. This is also standard procedure and similar to those approved by Courts in this type of litigation.

PART 4: MATERIAL TO BE RELIED UPON


1. The pleadings and proceedings filed herein;
2. Affidavit No. 1 of Hadi Davarinia affirmed March 11, 2025; and
3. Such further or additional evidence that Counsel may advise and the Honourable Court may permit.

TO THE PERSON RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if the application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and every other document that,
 - i. you intend to refer to at the hearing of this application, and
 - ii. has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - i. a copy of the filed application response;
 - ii. a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

- iii. if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9)

Date: March 11, 2025



Sage Nematollahi
Counsel to the Applicants

To be completed by the court only:

Order made

in the terms requested in paragraph _____ of Part 1 of this Notice of Application

with the following variations and additional terms:

Dated: _____

Signature of Judge Associate Judge

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

NONE OF THE CATEGORIES INDICATES [preliminary approval of a proposed settlement of shareholders' claim]

SCHEDULE "A" – Draft Order

NO. S-228113
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MICHAEL DEMMER, RODNEY BRUNK, TIM KEMPTER and WILLIAM WILLIAMSON

PLAINTIFFS

AND:

TREVALI MINING CORPORATION, RICUS GRIMBEEK, BRENDAN CREANEY,
JILL GARDINER, RUSSELL BALL, ALINE COTE, NICK POPOVIC, JEANNE HULL,
DAN ISSEROW and RICHARD WILLIAMS

DEFENDANTS

Brought under the *Class Proceedings Act*, RSBC 1996, c 50

BEFORE } THE HONOURABLE MADAM JUSTICE FITZPATRICK } 17/MAR/2025

ORDER MADE AFTER APPLICATION

ON THE APPLICATION of the Plaintiffs coming on for hearing before the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, B.C., on March 17, 2025; on reading the materials filed, including the settlement agreement dated March 11, 2025 ("**Settlement Agreement**"), and on hearing _____ for the Plaintiffs, and _____ for the Defendants, and on being advised that the Plaintiffs and the Defendants consent to this order;

THIS COURT ORDERS that:

1. Except where otherwise indicated, all capitalized terms in this order have the same meanings as are ascribed to them in the Settlement Agreement attached as **Schedule “A”** to this order;
2. This action is certified as a class proceeding for settlement purposes only, pursuant to the *Class Proceedings Act*, RSBC 1996, c 50, as amended;
3. The class is defined as: all persons and entities, wherever they may reside or may be domiciled, who purchased or otherwise acquired the common shares of Trevali in the primary market and/or in the secondary market between October 9, 2020 through to August 15, 2022 inclusive, and held some or all of such common shares as of the close of trading on April 14, 2022 and/or August 15, 2022 (the **“Class”**);
4. Michael Demmer, Rodney Brunk, Tim Kempter and William Williamson are appointed as the representative plaintiffs for the Class;
5. The following questions are certified as a common issue for settlement purposes only:
 - (a) Did disclosure documents issued by Trevali between October 9, 2020 through to August 15, 2022 and described in the Notice of Civil Claim contain misrepresentations concerning Trevali’s corporate governance practices?
 - (b) Did the Defendants engage in oppressive conduct by failing to exercise care and oversight to ensure Trevali had, maintained or implemented effective policies and procedures to manage matters concerning health and safety, corporate governance and risk management, and internal control systems, disclosure controls and procedures?
6. Any person who is a putative member of the Class who wishes to opt-out must do so by delivering a written election to Class Counsel by **[DATE]** by pre-paid mail, courier or email at the address specified in the long form notice of settlement approval attached as Schedule B to the Settlement Agreement (**“Long Form Notice”**). The written election

to opt-out must either be in the form attached as Schedule C to the Settlement Agreement, or include the information specified in the Long Form Notice;

7. The short form (publication) notice and long form notice are hereby approved substantially in the forms attached as Schedule B to the Settlement Agreement;

8. The plan for disseminating the Notice as provided for in section 12 of the Settlement Agreement is approved.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER

Signature of Sage Nematollahi

Lawyer for the Plaintiffs

By the Court:

Signature of Mary Buttery, KC

Lawyer for the Defendants

Registrar

SCHEDULE A

Settlement Agreement dated March 11, 2025

SETTLEMENT AGREEMENT

made as of March 11, 2025

between

**MICHAEL DEMMER, RODNEY BRUNK, TIM KEMPTER,
and WILLIAM WILLIAMSON**

(Michael Demmer, Rodney Brunk, Tim Kempter and William Williamson
collectively, the “**Plaintiffs**”)

and

**TREVALI MINING CORPORATION (“Trevali”),
RICUS GRIMBEEK, BRENDAN CREANEY, JILL GARDINER, RUSSELL BALL, ALINE
COTE, NICK POPOVIC, JEANE HULL, DAN ISSEROW,
and RICHARD WILLIAMS**

(Ricus Grimbeek, Brendan Creaney, Jill Gardiner, Russell Ball, Aline Cote,
Nick Popovic, Jeane Hull, Dan Isserow and Richard Williams collectively, the “**D&O Defendants**”,
and together with Trevali, the “**Defendants**”)

RECITALS:

WHEREAS on August 19, 2022, the CCAA Court issued an Initial Order pursuant to the CCAA, which resulted in the stay of all proceedings involving Trevali and its former and current directors and officers;

WHEREAS on October 7, 2022 the Plaintiffs commenced the Class Proceeding, a proposed class action for, *inter alia*; damages for alleged misrepresentations under Parts 16 and 16.1 of the BCSA and section 227 of the BCBCA, which was stayed as a result of the CCAA Proceeding.

WHEREAS on March 29, 2023, the Plaintiffs were appointed as class representatives in the CCAA Proceeding;

WHEREAS the Defendants deny all of the Plaintiffs’ allegations and do not admit, through the execution of this Settlement Agreement or otherwise, any unlawful conduct, liability, wrongdoing, or fault of any kind by the Defendants, as alleged in the Class Proceeding or otherwise;

WHEREAS despite the Defendants’ belief that the allegations advanced in the Class Proceeding are unfounded and that they have good and reasonable defences both to certification and on the merits, the Defendants have agreed to enter into this Settlement Agreement to achieve a final nation-wide resolution of all claims asserted, or which could have been asserted against them by the Plaintiffs in the Class Proceeding, and to avoid further expense, inconvenience and the distraction of protracted litigation;

WHEREAS the Parties intend by this Settlement Agreement to resolve all past, present and future claims of the Plaintiffs and Class Members arising out of or relating to the allegations pleaded in the Class Proceeding or otherwise arising from the Securities, without admission or prejudice whatsoever;

WHEREAS the Parties, with counsel, engaged in arms-length settlement discussions and negotiations that resulted in this Settlement Agreement, which includes all of the terms and conditions of the Settlement between the Defendants and the Plaintiffs, both individually and on behalf of the Class Members the Plaintiffs seek to represent, subject to the approval of the Court;

WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the burden and expense of litigating the Class Proceeding, including the risks and uncertainties associated with leave, certification, trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiffs and Class Members;

NOW THEREFORE in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that all claims of the Plaintiffs and Class Members in the Class Proceeding be settled and dismissed with prejudice and without costs, subject to the approval of the Class Action Court, on the following terms and conditions:

Section 1 Definitions

1.1 For the purposes of this Settlement Agreement, including the Recitals and Schedules hereto:

- (a) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel, the Claims Administrator or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and claims administration, but not Class Counsel Fees;
- (b) **BCBCA** means the Business Corporations Act, SBC 2002, c 57;
- (c) **BCSA** means the *Securities Act*, RSBC 1996, c 418;
- (d) **CCAA** means the Companies' Creditors Arrangement Act, RSC 1985, c C-36;
- (e) **CCAA Court** means the Supreme Court of British Columbia or any other court seized of, or having jurisdiction in, the CCAA Proceeding;
- (f) **CCAA Proceeding** means *In the Matter of the Companies' Creditors Arrangement Act, RSC 1985, c C-36 as amended and In the Matter of the Business Corporations Act, SBC 2002, c 57 and the Business Corporations Act, SNB 1981, c B-9.1, as amended and In the Matter of a Plan of Compromise and Arrangement of Trevali Mining Corporation and Trevali Mining (New Brunswick) Ltd., SCBC Vancouver Registry No. VLC S-S-226670;*

- (g) **Certification** means certification of a class proceeding pursuant to section 4 of the *Class Proceedings Act*, RSBC 1996, c 50;
- (h) **Claims Administrator** means KND Complex Litigation and any employees of KND Complex Litigation, or a third-party professional firm and any employees of such firm, appointed by the Class Action Court to administer:
 - (i) this Settlement Agreement;
 - (ii) the program whereby Class Members can exclude themselves from the Action; and
 - (iii) the Distribution Protocol;
- (i) **Class Claims Bar Deadline** means the date by which each Settlement Class Member must file a claim form and all required supporting documentation with the Claims Administrator, which date shall be set out in the Second Notice and which shall be at least one hundred twenty (120) days after the date on which the Second Notice is first published;
- (j) **Class or Class Member** means, other than the Excluded Persons, all persons and entities, wherever they may reside or may be domiciled, who purchased or otherwise acquired the common shares of Trevali in the primary market and/or in the secondary market during the Class Period, and held some or all of such common shares as of the close of trading on April 14, 2022 and/or August 15, 2022;
- (k) **Class Action Court** means the Supreme Court of British Columbia, or any other court seized of, or having jurisdiction in, the Class Proceeding;
- (l) **Class Counsel** means KND Complex Litigation;
- (m) **Class Counsel Fees** includes all of the fees and disbursements of Class Counsel, and any applicable taxes thereon;
- (n) **Class Period** means October 9, 2020 through to August 15, 2022 inclusive;
- (o) **Class Proceeding** means *Demmer et al. v. Trevali Mining Corporation et al.*, SCBC Vancouver Registry No. VLC-S-S-228113;
- (p) **Collateral Agreement** means the agreement executed contemporaneously with this Settlement Agreement, which sets the Opt-Out Threshold, the terms of which shall be kept confidential unless a Court requires disclosure thereof;
- (q) **Contributing Party** means the Defendants' insurer, as will be identified in the Letter of Undertaking, but only in their capacity as insurer of the Defendants.
- (r) **Defence Counsel** means Osler, Hoskin & Harcourt LLP;

- (s) ***Distribution Protocol*** means the procedures for the administration and distribution of the Settlement Amount as established by Class Counsel and approved by the Class Action Court;
- (t) ***Effective Date*** means the date when the Settlement Approval Order issued by the Class Action Court approving this Settlement Agreement becomes a Final Approval Order;
- (u) ***Escrow Account*** means an interest-bearing escrow account at a Canadian Schedule 1 bank under the control of KND Complex Litigation or the Claims Administrator for the benefit of the Settlement Class Members;
- (v) ***Excluded Persons*** means the following entities and persons:
 - (i) Trevali and its current or former directors, officers, subsidiaries, partners, affiliates, legal representatives, predecessors, successors and assigns;
 - (ii) the D&O Defendants;
 - (iii) Glencore plc, Glencore International AG, Glencore AG and Glencore Canada Corporation (collectively, “**Glencore Entities**”), and their directors, officers, subsidiaries, partners, affiliates, legal representatives, predecessors, successors and assigns;
 - (iv) any judge of a court who has heard or will hear any motion, application or appeal in respect of the Class Proceeding;
- (w) ***Execution Date*** means the date on the execution pages as of which the Parties have fully executed this Settlement Agreement;
- (x) ***Final Approval Order*** means the later of a final judgment pronounced by the Class Action Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken; or once there has been an affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals;
- (y) ***Final Lift Stay Order*** means the later of a final judgment entered by the CCAA Court granting the Lift Stay Order, the time to appeal such judgment having expired without any appeal being taken, and if an appeal lies, the lifting of the Stay of Proceedings upon a final disposition of all appeals;
- (z) ***First Application*** means the applications or motions brought before the Class Action Court, for orders:
 - (i) granting Certification and Leave for settlement purposes only;
 - (ii) setting the date for the hearing of the Second Application;
 - (iii) approving the form of the First Notice;

- (iv) approving and authorizing the publication and dissemination of the First Notice;
 - (v) appointing the Claims Administrator; and
 - (vi) appointing Class Counsel to control the Escrow Account subject to the terms of this Settlement Agreement;
- (aa) **First Notice** means the form or forms of notice to the Class, as agreed to by the Plaintiffs and Trevali, and approved by the Class Action Court, which shall substantially be in accordance with the notices at Schedule “B” and a French translation thereof, which inform(s) the Class Members of: (i) the date and location of the Settlement Approval Hearing; (ii) the principal elements of the Settlement Agreement; (iii) the process by which Class Members may object to or opt out of the Settlement; and (iv) Class Counsel Fees requested by Class Counsel;
 - (bb) **Honorarium** means any payment awarded individually to the Plaintiffs in the Proceeding in consideration of the Plaintiffs’ time, effort, and result obtained for Class Members, as approved by the Class Action Court;
 - (cc) **Leave** means leave to commence a secondary market securities claim under section 140.8 of the BCSA;
 - (dd) **Letter of Undertaking** means the agreement executed contemporaneously with this Settlement Agreement, which sets the contribution of the Contributing Party, the terms of which shall be kept confidential unless a Court requires disclosure thereof;
 - (ee) **Lift Stay Order** means the order of the CCAA Court to be requested by the Defendants, with consent of the Plaintiffs, lifting the Stay of Proceedings with respect to Trevali and the D&O Defendants for the sole purpose of allowing the Plaintiffs to apply for: (i) Certification for settlement purposes, and (ii) the Settlement Approval Order;
 - (ff) **Opt-Out Deadline** means 30 (thirty) days from the first publication of the First Notice;
 - (gg) **Opt-Out Parties** means collectively, all persons who would otherwise be Class Members who validly opt out of the Class Proceeding, each individually being an “Opt-Out Party”;
 - (hh) **Opt-Out Threshold** means the total number of Trevali outstanding shares required to be held by all Opt-Out Parties in order to trigger the Defendants’ right to terminate this Settlement Agreement in accordance with Section 9.6 hereof, as particularized in the Collateral Agreement;
 - (ii) **Parties** means the Plaintiffs and the Defendants;
 - (jj) **Released Claims** means any and all manner of claims, demands, actions, suits, debts, judgments, losses, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory,

punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, Administration Expenses, penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, relating in any way to any conduct anywhere related to, arising from, or described in the pleadings filed in the Class Proceeding (or which could have been alleged in the Class Proceeding) or otherwise arising from the Securities including, without limitation, any and all claims which have been, might have been, are now, or could have been asserted by any Plaintiff or any Class Member in an individual or representative capacity, directly or indirectly, whether in Canada or elsewhere, arising out of, based upon, or related to, in whole or in part, the alleged facts and circumstances underlying the claims and causes of action set forth in (or that could have been raised in) the Class Proceeding;

- (kk) **Releasees** means, jointly and severally, individually and collectively, the Defendants and all of their present and former direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, lawyers, attorneys, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators, assigns, beneficiaries and *ayants-droits* of each of the foregoing;
- (ll) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers, assigns, beneficiaries and *ayants-droits*;
- (mm) **Second Application** means the applications or motions brought before the Class Action Court for orders:
 - (i) approving the Settlement Agreement;
 - (ii) approving the Second Notice;
 - (iii) approving the Distribution Protocol;
 - (iv) approving the Claim Form;
 - (v) approving the Class Claims Bar Deadline; and
 - (vi) approving the Class Counsel Fees and any Honorariums;
- (nn) **Second Notice** means the form or forms of notice to the Class to be prepared by Class Counsel and approved by Defence Counsel and the Class Action Court, and a French translation thereof, which inform(s) the Settlement Class of *inter alia* the granting of the Settlement Approval Order and the process to submit a claim for a portion of the net Settlement Amount;

- (oo) *Securities* means the securities issued by Trevali, including, without limitation, common shares and subscription receipts;
- (pp) *Settlement* means the settlement provided for in this Settlement Agreement;
- (qq) *Settlement Agreement* means this agreement, including recitals and schedules;
- (rr) *Settlement Approval Hearing* means the hearing for the Class Action Court's approval of the Settlement;
- (ss) *Settlement Approval Order* means the order of the Class Action Court granting final approval of this Settlement Agreement and directing its consummation pursuant to its terms and conditions, approving the Release, and dismissing the claims asserted in the Class Proceeding with prejudice and without costs to any party. The Parties agree to submit a mutually agreed proposed Settlement Approval Order for the Class Action Court's consideration in connection with the Plaintiff's application for settlement approval;
- (tt) *Settlement Class or Settlement Class Members* means, other than the Excluded Persons and any person who validly opted out of the Class Proceeding:
 - (i) all persons and entities, wherever they may reside or may be domiciled, who purchased or otherwise acquired the common shares of Trevali in the primary market and/or in the secondary market during the Class Period, and held some or all of such common shares as of the close of trading on April 14, 2022 and/or August 15, 2022;
- (uu) *Stay of Proceedings* means the stay of proceedings ordered by the CCAA Court, as part of the CCAA Proceeding, with respect to all proceedings against or in respect of, inter alia, Trevali and its former and current directors and officers, as per the terms of the Initial Order dated August 19, 2022, as subsequently amended, restated, and extended by the CCAA Court from time to time.

Section 2 Settlement Amount

- 2.1 Contingent on the approval of the Settlement Agreement by the Court, the Defendants have agreed to pay the settlement amount of CDN \$2,800,000 (two million and eight hundred thousand dollars) (the "**Settlement Amount**") on behalf of the Defendants, without any admission of liability, in accordance with this Settlement Agreement.
- 2.2 Subject to Section 9, within 60 (sixty) days of the granting of the orders in the First Application, the Contributing Party, pursuant to the Letter of Undertaking, shall, on behalf of the Defendants, pay the Settlement Amount as directed by Class Counsel for deposit into the Escrow Account, unless otherwise ordered by the Class Action Court.
- 2.3 The Settlement Amount shall be paid in full satisfaction of the Released Claims against the Releasees.

- 2.4 The Settlement Amount shall be inclusive of all Administration Expenses, Class Counsel Fees, Honorariums, interest, costs, and any other expense incurred by Class Counsel.
- 2.5 The Defendants shall have no obligation to pay to the Plaintiffs or the Settlement Class Members any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Class Proceeding.
- 2.6 Upon payment of the Settlement Amount to Class Counsel after the Effective Date, the Claims Administrator shall distribute the Settlement Amount as follows, subject to the approval of the Court:
- (a) As set out in Section 4, to Class Counsel on account of Class Counsel Fees inclusive of all disbursements and applicable taxes;
 - (b) As set out in Section 5, to Class Counsel, in trust, for the benefit of the Plaintiffs in respect of any Honorariums;
 - (c) The funds remaining will be distributed in accordance with the Distribution Protocol.
- 2.7 Except as expressly provided herein, all interest earned on the Settlement Amount in the Escrow Account shall accrue to the benefit of the Settlement Class and shall become and remain part of the amount held in escrow pursuant to this Settlement Agreement (together with the Settlement Amount, the “**Escrow Amount**”).
- 2.8 Subject to section 2.9, all taxes payable on any interest which accrues on or otherwise in relation to the Escrow Amount shall be paid from the Escrow Account. KND Complex Litigation or the Claims Administrator, as may later be appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Escrow Amount, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Escrow Amount shall be paid from the Escrow Account.
- 2.9 The Defendants shall have no responsibility in any way related to the Escrow Account including but not limited to, making any filings relating to the Escrow Account, paying taxes on any income earned by the Escrow Amount, or paying any taxes on the monies in the Escrow Account, unless this Settlement Agreement is terminated as provided for herein, in which case any interest earned on the Escrow Amount shall be paid to Trevali who, in such case, shall be responsible for the payment of any taxes on such interest not previously paid by KND Complex Litigation or the Claims Administrator.
- 2.10 The Parties agree that they are in no way liable for any taxes any Settlement Class Members may be required to pay as a result of receiving any benefits under this Settlement Agreement. No opinion concerning the tax consequences of this Settlement Agreement to any Settlement Class Member is given or will be given by the Parties or their respective counsel, nor are they providing any representation or guarantee respecting the tax consequences of this Settlement Agreement as to any Settlement Class Member. Each Settlement Class Member is responsible for their tax reporting and other obligations respecting this Settlement Agreement, if any.

Section 3 Settlement Approval

- 3.1 The Parties will use their best efforts to implement this Settlement Agreement, obtain approval of this Settlement Agreement from the Class Action Court, and secure the prompt, complete and final disposition of the Class Proceeding.
- 3.2 The Parties will jointly request that the presiding judge of the CCAA Proceedings be seized of the Class Proceeding and hear the First and Second Applications as the Class Action Court.
- 3.3 Settlement approval shall be sought in the following way, subject to the availability of the Class Action Court:
 - (a) As soon as practicable after the Execution Date and in any event no later than twenty (21) business days thereafter or as agreed to by the Parties, the Defendants shall file an application for the Lift Stay Order and the Plaintiffs shall bring the First Application.
 - (b) As soon as practicable after obtaining the Lift Stay Order and the orders sought on the First Application, the Plaintiffs shall bring the Second Application.
 - (c) The Defendants will approve any submissions made to the Court for the First and Second Applications.
 - (d) The Settlement Approval Order shall be substantially in the form attached as Schedule D.

Section 4 Class Counsel Fees

- 4.1 Class Counsel Fees will be awarded at the discretion of the Class Action Court.
- 4.2 The Defendants will not make submissions in relation to Class Counsel Fees.
- 4.3 The approval of Class Counsel Fees is not a material term of this Settlement Agreement, and this Settlement Agreement shall not be contingent upon Class Action Court approval of Class Counsel Fees. A separate order will be taken out dealing with Class Counsel Fees and any Honorariums.
- 4.4 Class Counsel Fees may only be paid out of the Settlement Amount after the Effective Date.
- 4.5 The Defendants shall not be liable for any fees, disbursements, or taxes of any of Class Counsel or the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents or representatives.

Section 5 Honorariums for Plaintiffs

- 5.1 Any Honorariums will be awarded at the discretion of the Court.
- 5.2 The Defendants will not make submissions in relation to any Honorariums.
- 5.3 The approval of any Honorariums is not a material term of this Settlement Agreement and this Settlement Agreement shall not be contingent upon court approval of any Honorariums.

- 5.4 Any Honorariums may only be paid out of the Settlement Amount after the Effective Date.
- 5.5 The Defendants shall not be liable to the Plaintiffs for any Honorariums, if awarded by the Court.

Section 6 Distribution of Settlement Amount

- 6.1 The formula for distribution of the Settlement Amount to Settlement Class Members shall be contained in the Distribution Protocol.
- 6.2 The Defendants shall take no position on the Class Action Court's approval of the Distribution Protocol, and shall not make any submissions to the Class Action Court about the Distribution Protocol, unless requested by the Class Action Court.

Section 7 Releases, Withdrawals and Dismissals

- 7.1 As of the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors will fully, finally, forever and absolutely release, relinquish, acquit, and discharge the Releasees from and for the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, and shall not now or hereafter institute, maintain, or assert on their own behalf, on behalf of the Class, or on behalf of any other person or entity, any Released Claims.
- 7.2 Within 30 days of the Effective Date, the Plaintiffs, in their capacity as shareholder representatives, will withdraw their claims in the CCAA Proceeding.
- 7.3 Within 30 days of the Effective Date, the D&O Defendants will withdraw their claims for indemnification in the CCAA Proceeding in excess of the retention. For clarity, the withdrawal of claims by the D&O Defendants in the CCAA Proceeding does not include any claims for retention made by or on behalf of insurers of the D&O Defendants.
- 7.4 Without limiting any other provisions herein, each Releasor will be deemed by the Settlement Agreement completely and unconditionally to have released and forever discharged the Releasees from any and all Released Claims, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, and demands whatsoever, whether known or unknown, that were asserted or could have been asserted in the Proceedings that is the subject of this Settlement Agreement or in relation to any of the facts alleged therein, or in relation to the Securities.
- 7.5 The Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those they now know or believe to be true concerning the subject matter of the Class Proceeding, the facts and circumstances alleged in the Class Proceeding, or the release herein. Nevertheless, without limiting any other provisions herein, it is the intention of the Plaintiffs and Settlement Class Members in executing this Settlement Agreement to fully, finally and forever settle, release, discharge, and hold harmless all such matters, and all claims which exist, hereafter may exist, or may have existed (whether or not previously or currently asserted in any action

or proceeding) relating in any way to the subject matter of the Class Proceeding or in relation to any of the facts and circumstances alleged therein, or otherwise arising from the Securities.

- 7.6 Upon the Effective Date, each Releasor will be forever barred and enjoined from continuing, commencing, instituting, maintaining, asserting or prosecuting, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum, against any Releasee or any other person or third party who may claim contribution or indemnity or claim over other relief from any Releasee, whether pursuant to the *Negligence Act*, RSBC 1996, c 333 or other legislation or at common law or equity, in respect of any Released Claims. For greater certainty and without limiting the foregoing, the Releasors shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.
- 7.7 Upon the Effective Date, the Parties consent to the dismissal of the Class Proceedings, with prejudice, as against the Defendants and without costs to the Parties, which dismissal will be effective upon pronouncement of the Settlement Approval Order.
- 7.8 Upon the Effective Date, each Settlement Class Member shall be deemed irrevocably to consent to the dismissal, with prejudice, of any other action or proceeding relating to the Released Claims against the Releasees and all such actions or proceedings shall be dismissed, with prejudice.

Section 8 No Admission of Liability

- 8.1 The Parties agree that, whether or not this Settlement Agreement is finally approved or is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute, regulation or law, or of any wrongdoing or liability by the Defendants, or of the truth of any of the claims or allegations made in the Class Proceeding, or in any other pleading filed by the Plaintiffs or Class Members related to the subject matter of the Class Proceeding or the facts or circumstances alleged therein.
- 8.2 The Parties further agree that, whether or not this Settlement Agreement is finally approved or is terminated, this Settlement Agreement, and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to seek court approval of this Settlement Agreement, to give effect to and enforce the provisions of this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise permitted by law.

Section 9 Termination of Settlement Agreement

Right of Termination

- 9.1 The Parties expressly reserve all their respective rights and may terminate this Settlement Agreement in the event that:
- (a) the CCAA Court declines to grant the Lift Stay Order as contemplated by section 3.3;
 - (b) the Lift Stay Order does not become a Final Lift Stay Order;
 - (c) the Class Action Court declines to certify the Class Proceeding for the purposes of settlement, or any such certification is reversed or altered on appeal;
 - (d) the Class Action Court declines to approve this Settlement Agreement or any material part thereof or approves this Settlement Agreement in a materially modified form, or any such approval is reversed or altered on appeal;
 - (e) any court issues an order approving the Settlement that is not substantially in the form attached to this Settlement Agreement as Schedule D;
 - (f) the CCAA Court fails or declines to issue any approval or other order necessary, if any, for the execution or implementation of the Settlement; or
 - (g) the Settlement Approval Order does not become a Final Approval Order.
- 9.2 In the event that the Opt-Out Threshold is exceeded as provided for in section 9.5 of this Settlement Agreement, the Defendants shall have the right, but not the obligation, to terminate this Settlement Agreement in accordance with the terms of section 9.5.
- 9.3 Any order, ruling or determination with respect to Class Counsel Fees, Honorariums or the Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not constitute any basis for the termination of this Settlement Agreement.
- 9.4 If material parts of the Settlement Agreement are not approved, or if approval of any material portion or provision of the Settlement Agreement is reversed or altered on appeal, or if terminated in accordance with section 9.1, then:
- (a) this Settlement Agreement shall become null and void and shall have no further force or effect except as provided for in section 9.13;
 - (b) the Parties shall be restored to their respective positions in the Class Proceeding immediately prior to reaching the Settlement;
 - (c) any order by the Class Action Court certifying the Class Proceeding for the purposes of settlement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and shall be without prejudice to any position of any of the Parties on any issue in the Class Proceeding, the CCAA Proceeding or any other proceeding; and

- (d) documents or communications related to the Settlement (including the minutes of settlement and this Settlement Agreement) shall have no force or effect, with all applicable privilege protections maintained, and shall not be admissible in evidence for any purpose in the Class Proceeding, the CCAA Proceeding or in any other action or proceeding whatsoever.

Effect of Exceeding the Opt-Out Threshold

- 9.5 Notwithstanding any other provision in the Settlement Agreement, the Defendants, in their sole discretion, may elect to terminate the Settlement Agreement if the Opt-Out Threshold is exceeded provided its election is made by delivering a written notice in accordance with subsection 13.12 within thirty (30) business days of receiving notice from Class Counsel notifying it of the number of opt-outs received and showing the Opt-Out Threshold being exceeded. If the Defendants do not elect to terminate the Settlement Agreement within this period, their right to terminate the Settlement Agreement pursuant to the provisions of this section will expire.
- 9.6 If the Opt-Out Threshold is not exceeded, the Defendants' right to terminate the Settlement Agreement pursuant to the provisions of this section is inoperative.
- 9.7 The Opt-Out Threshold shall be stated in the Collateral Agreement signed contemporaneously with the execution of this Settlement Agreement. The Opt-Out Threshold shall be kept confidential by the Parties and their respective counsel, and may be confidentially shown to the Class Action Court solely for the purposes of seeking the Settlement Approval Order, unless disclosure is ordered by the CCAA Court or Class Action Court, or if the Defendants and Plaintiffs provide prior written consent to disclosure.

Steps Required on Termination

- 9.8 If this Settlement Agreement is terminated, either the Defendants or the Plaintiffs shall, within thirty (30) days after termination, apply to the Class Action Court, on notice to the Parties, for an order:
 - (a) declaring this Settlement Agreement null and void and of no force or effect except for the provisions of those sections listed in Section 9.12;
 - (b) setting aside and declaring null and void and of no force or effect, *nunc pro tunc*, all prior orders or judgments entered by a court in accordance with the terms of this Settlement Agreement; and
 - (c) authorizing the payment to Trevali of the Escrow Amount, after deductions made of all already incurred and/or paid costs, fees, disbursements or taxes of the Claims Administrator and/or relating to any notices.
- 9.9 Subject to Section 9.13, the Plaintiffs shall consent to the orders sought in any application made by the Defendants under Section 9.8 and the Defendants shall consent to the orders sought in any application made by the Plaintiffs under Section 9.8.

Notice of Termination

9.10 If this Settlement Agreement is terminated, a notice of the termination will be given to the Settlement Class. Class Counsel will cause the notice of termination, in a form approved by the Class Action Court, to be published and disseminated as the Class Action Court directs, the whole to be paid from the Escrow Account.

Effect of Termination

9.11 In the event this Settlement Agreement is terminated as provided for herein or otherwise fails to take effect for any reason:

- (a) the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as expressly provided for herein;
- (b) no application for Certification for settlement purposes or application to approve this Settlement Agreement which has not been decided shall proceed;
- (c) the Parties will cooperate in seeking to have all prior orders or judgments entered by a court in accordance with the terms of this Settlement Agreement set aside and declared null and void and of no force or effect, and any of the Plaintiffs and Defendants shall be estopped from asserting otherwise;
- (d) Class Counsel shall, within thirty (30) business days of the issuance of the order contemplated by 10.9(c), return to Trevali the Escrow Amount, after deductions made of all already incurred and/or paid costs, fees, disbursements or taxes of the Claims Administrator and/or relating to any notices;
- (e) this Settlement Agreement will have no further force or effect and no effect on the rights of the Parties except as specifically provided for herein;
- (f) this Settlement Agreement will not be introduced into evidence or otherwise referred to in any litigation against Trevali, the Individual Defendants or the Underwriter Defendants.

9.12 Notwithstanding the provisions of Section 9.5, if this Settlement Agreement is terminated, the provisions of Sections 2.8, 2.9, 8.1, 8.2, 9.4, 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, 13.5, 13.6, 13.10, 13.11, 13.12, 13.13, 13.14 and the definitions and recitals applicable thereto (but only for the limited purpose of the interpretation of those sections), shall survive termination and shall continue in full force and effect. All other provisions of this Settlement Agreement and all other obligations pursuant to it shall cease immediately.

Disputes Relating to Termination

9.13 If there is a dispute about the termination of this Settlement Agreement, the Parties agree that the Class Action Court shall determine the dispute on an application made by the Defendants or the Plaintiffs on notice to the Parties.

Section 10 Administration

- 10.1 The Class Action Court will appoint KND Complex Litigation or a third-party firm as Claims Administrator to serve until further order of the Court, to implement this Settlement Agreement, the opt-out program and the Distribution Protocol, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Settlement Agreement and in the Distribution Protocol.
- 10.2 All Administration Expenses shall be paid from the Settlement Amount, subject to approval of the Class Action Court.
- 10.3 The Claims Administrator will be responsible for the following, including all associated costs:
 - (a) disseminating the First Notice and the Second Notice;
 - (b) responding to inquiries from Class Members;
 - (c) receiving and maintaining any Class Member correspondence regarding opting out of the Class Proceeding and objections to the Settlement, and providing Defence Counsel with a list of all individuals who have opted out;
 - (d) posting the First Notice and the Second Notice on Class Counsel's website;
 - (e) distributing the Settlement Amount in accordance with the Distribution Protocol.

Section 11 Notice

- 11.1 The First Notice shall be disseminated within thirty (30) days (unless otherwise specified) following the pronouncement of the orders sought on the First Application or as soon as reasonably possible thereafter.
- 11.2 The Second Notice shall be disseminated within thirty (30) days (unless otherwise specified) following the pronouncement of the orders sought on the Second Application or as soon as reasonably possible thereafter.
- 11.3 The First Notice and the Second Notice shall be disseminated in the following manner, unless otherwise ordered by the Class Action Court:
 - (a) sent by email by Class Counsel to any Class Member that has registered with them regarding the Class Proceeding;
 - (b) by the Claims Administrator placing the notice online on websites such as Stockhouse.com and CEO.ca in abbreviated form with a URL leading to more information on a number of websites for a period of 45 days;
 - (c) by the Claims Administrator disseminating the notice once through Canada NewsWire in English and French; and
 - (d) posted on Class Counsel's website;

or in such form or manner as approved or ordered by the Class Action Court.

- 11.4 All costs associated with the publication of the First Notice and the Second Notice shall be paid from the Settlement Amount.
- 11.5 If any court requires that additional notice be published, the Parties agree that the costs shall be paid from the Settlement Amount and the terms of payment shall be the same as for the Notice of the settlement approval hearing.
- 11.6 The Defendants shall not have any responsibility for the costs of the First Notice, the Second Notice or any additional notice required by any court.

Section 12 Opt-Outs

- 12.1 Persons who want to opt out of the Class Proceeding must do so by sending a written election to opt out (“**Election**”) by pre-paid mail, courier or email to Class Counsel at an address identified in the First Notice. An Election to opt out will only be valid if it is received by Class Counsel at the designated address on or before the Opt-Out Deadline.
- 12.2 In order to be valid, the Election must be signed by the person who wishes to opt out and either (i) in the form attached as Schedule C or (ii) contain the following information:
- (a) the person’s full name, current address and telephone number;
 - (b) proof of class membership in the form of a share certificate or other documented proof of shareholding in Trevali purchased or acquired during the Class Period, and held as of the close of trading on April 14, 2022 and/or August 15, 2022;
 - (c) a statement to the effect that the person wishes to be excluded from the Class Proceeding.
- 12.3 Opt-out forms or documents that purport to opt out multiple Class Members, or so-called “mass” or “class” opt-outs, shall not be permitted.
- 12.4 Class Counsel shall provide Defence Counsel with copies of all Elections or opt-out forms received by Class Counsel within five (5) business days of the Opt-Out Deadline.
- 12.5 Upon the Settlement Approval Order becoming a Final Order, any Class Member who has not opted out of the Class Proceeding shall be bound by the terms of the Settlement Agreement.
- 12.6 With respect to any potential Class Member who validly opts out from the Class Proceeding, the Defendants reserve all of their legal rights and defences.

Section 13 Miscellaneous

- 13.1 The Recitals set out herein are incorporated with and form part of this Settlement Agreement.
- 13.2 The Schedules annexed hereto form part of this Settlement Agreement.
- 13.3 Class Counsel or Defence Counsel may apply to the Class Action Court for directions in respect of the implementation and administration of this Settlement Agreement. All applications contemplated by this Settlement Agreement, including applications to the Class Action Court for directions, shall be on notice to counsel for the Parties.

- 13.4 Except as otherwise provided herein, the Parties shall bear their own respective costs of the Class Proceeding, the CCAA Proceeding and the approval and implementation of the Settlement Agreement. The Defendants have no liability with respect to the administration of the Settlement Amount.
- 13.5 This Settlement Agreement shall be governed by, construed, and interpreted solely in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.
- 13.6 The Settlement Agreement constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. The Parties agree that they have not received or relied on any agreements, representations, or promises other than as contained in the Settlement Agreement. None of the Parties shall be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.
- 13.7 This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto.
- 13.8 This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Class Members, the Defendants, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made by the Defendants shall be binding upon all of the Releasees.
- 13.9 This Settlement Agreement has been the subject of negotiations and discussions among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.
- 13.10 Each of the undersigned represents that they are fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.
- 13.11 This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronically transmitted signature shall be deemed an original signature for purposes of executing this Settlement Agreement. This Settlement Agreement may be delivered and is fully enforceable in either original or electronic form provided that it is duly executed.
- 13.12 Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication, or document shall be provided by email, or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs and for Class Counsel:

Attn: Eli Karp / Sage Nematollahi
KND Complex Litigation
401 – 2300 Yonge Street Toronto, ON
M4P 1E4
ek@knd.law / sn@knd.law

For the Defendants:

Attn: Mary Buttery, KC / Lindsay Burgess / Brodie Noga
Osler, Hoskin & Harcourt LLP 1055 Dunsmuir Street
Suite 3000, Bentall Four Vancouver, BC V7X 1K8
muttery@osler.com / lbουργess@oslers.com / bnoga@osler.com

- 13.13 The Parties have executed this Settlement Agreement as of the date on the cover page.
- 13.14 It is the express wish of the parties that this Settlement Agreement be drawn up in the English language only. Il est la volonté expresse des parties que cette convention et tous les documents s’y rattachant, y compris les avis et les autres communications, soient rédigés et signés seulement en anglais.

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FOR THE PLAINTIFFS AND FOR CLASS COUNSEL:



Name: Sage Nematollahi

KND Complex Litigation
Solicitor for Michael Demmer, Rodney Brunk, Tim Kempter and William Williamson

FOR THE DEFENDANTS:



Name: Mary Buttery, KC

Osler, Hoskin & Harcourt LLP
Solicitor for Trevali Mining Corporation, Ricus Grimbeek, Brendan Creaney, Jill Gardiner,
Russell Ball, Aline Cote, Nick Popovic, Dan Isserow, and Richard Williams

SCHEDULE A

NO. S-228113
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MICHAEL DEMMER, RODNEY BRUNK, TIM KEMPTER and WILLIAM WILLIAMSON

PLAINTIFFS

AND:

TREVALI MINING CORPORATION, RICUS GRIMBEEK, BRENDAN CREANEY,
JILL GARDINER, RUSSELL BALL, ALINE COTE, NICK POPOVIC, JEANNE HULL,
DAN ISSEROW and RICHARD WILLIAMS

DEFENDANTS

Brought under the *Class Proceedings Act*, RSBC 1996, c 50

BEFORE } THE HONOURABLE JUSTICE ♦ } ____ / ♦ /2025

ORDER MADE AFTER APPLICATION

ON THE APPLICATION of the Plaintiffs coming on for hearing before the Honourable Justice ♦ at the courthouse at 800 Smithe Street, Vancouver, B.C., on ♦, 2025; on reading the materials filed, including the settlement agreement dated ♦ (“**Settlement Agreement**”), and on hearing ♦ the Plaintiffs, and ♦ for the Defendants, and on being advised that the Plaintiffs and the Defendants consent to this order;

THIS COURT ORDERS that:

1. Except where otherwise indicated, all capitalized terms in this order have the same meanings as are ascribed to them in the Settlement Agreement attached as **Schedule “A”** to this order;

2. This action is certified as a class proceeding for settlement purposes only, pursuant to the *Class Proceedings Act*, RSBC 1996, c 50, as amended;
3. The class is defined as: all persons and entities, wherever they may reside or may be domiciled, who purchased or otherwise acquired the common shares of Trevali in the primary market and/or in the secondary market between October 9, 2020 through to August 15, 2022 inclusive, and held some or all of such common shares as of the close of trading on April 14, 2022 and/or August 15, 2022 (the “**Class**”);
4. Michael Demmer, Rodney Brunk, Tim Kempter and William Williamson are appointed as the representative plaintiffs for the Class;
5. The following questions are certified as a common issue for settlement purposes only:
 - (a) Did disclosure documents issued by Trevali between October 9, 2020 through to August 15, 2022 and described in the Notice of Civil Claim contain misrepresentations concerning Trevali’s corporate governance practices?
 - (b) Did the Defendants engage in oppressive conduct by failing to exercise care and oversight to ensure Trevali had, maintained or implemented effective policies and procedures to manage matters concerning health and safety, corporate governance and risk management, and internal control systems, disclosure controls and procedures?
6. Any person who is a putative member of the Class who wishes to opt-out must do so by delivering a written election to Class Counsel by [DATE] by pre-paid mail, courier or email at the address specified in the long form notice of settlement approval attached as Schedule B to the Settlement Agreement (“**Long Form Notice**”). The written election to opt-out must either be in the form attached as Schedule C to the Settlement Agreement, or include the information specified in the Long Form Notice;
7. The short form (publication) notice and long form notice are hereby approved substantially in the forms attached as Schedule B to the Settlement Agreement;
8. The plan for disseminating the Notice as provided for in section 12 of the Settlement Agreement is approved.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER

Signature of Sage Nematollahi

Lawyer for the Plaintiffs

By the Court:

Signature of Mary Buttery, KC

Lawyer for the Defendants

Registrar

SCHEDULE A

[Settlement Agreement]

SCHEDULE B

[Short-Form Notice]

PROPOSED CLASS ACTION SETTLEMENT

NOTICE OF PROPOSED SETTLEMENT AND SETTLEMENT APPROVAL HEARING

DID YOU ACQUIRE COMMON SHARES OF TREVALI MINING CORPORATION IN THE PRIMARY MARKET AND/OR THE SECONDARY MARKET BETWEEN OCTOBER 9, 2020 AND AUGUST 15, 2022 INCLUSIVE, AND HOLD SOME OR ALL OF SUCH COMMON SHARES AS OF THE CLOSE OF TRADING ON APRIL 14, 2022 AND/OR AUGUST 15, 2022?

THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS

A class action settlement has been reached in *Demmer et al. v. Trevali Mining Corporation et al.*, SCBC S-228113. The action was certified by the Supreme Court of British Columbia.

The settlement is a compromise and is not an admission of liability or wrongdoing or fault by the Defendants. The proposed settlement is subject to court approval. Capitalized terms used herein but not defined have the same meanings as are ascribed to them in the Settlement Agreement.

The class action has been certified on behalf of all persons and entities, wherever they may reside or may be domiciled, who purchased or otherwise acquired the common shares of Trevali in the primary market and/or in the secondary market between October 9, 2020 through to August 15, 2022 inclusive, and held some or all of such common shares as of the close of trading on April 14, 2022 and/or August 15, 2022.

For the payment of \$2,800,000 by the Defendants, the Class will release the Defendants from all claims. The settlement funds, after payment of Class Counsel's fees, expenses, and any honorariums to the plaintiffs, will be distributed to the class in accordance with the Distribution Protocol.

The representative plaintiffs have entered into a contingency fee agreement with class counsel providing for a maximum fee of 30%. Class Counsel will seek approval of their fees at or after the settlement approval hearing. The Court will determine the amount to be paid to Class Counsel for legal fees and disbursements.

You are automatically included in the Class, and will be bound by the Settlement if approved by the Court, unless you opt out. If you do not want to be part of the lawsuit, you must opt out of the proceeding by delivering an opt out form to Class Counsel by no later than **◆, 2025**.

For members of the Class that wish to object to the Settlement, Distribution Protocol, Class Counsel Fees or the plaintiffs' honorariums, you must notify Class Counsel no later than **◆, 2025**, in the manner set out in the long form notice.

Class Counsel are KND Complex Litigation. More information on the settlement (including the opt-out form and Settlement Agreement) is available at [INSERT LINK HERE].

This notice has been authorized by the Supreme Court of British Columbia

[Long-Form Notice]

NOTICE OF PROPOSED SETTLEMENT AND SETTLEMENT APPROVAL HEARING

DID YOU ACQUIRE COMMON SHARES OF TREVALI MINING CORPORATION IN THE PRIMARY MARKET AND/OR THE SECONDARY MARKET BETWEEN OCTOBER 9, 2020 AND AUGUST 15, 2022 INCLUSIVE, AND HOLD SOME OR ALL OF SUCH COMMON SHARES AS OF THE CLOSE OF TRADING ON APRIL 14, 2022 AND/OR AUGUST 15, 2022?

THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS

A class action settlement has been reached between the parties in *Demmer et al. v. Trevali Mining Corporation et al.*, SCBC Vancouver Registry No. VLC-S-S-228113. Capitalized terms used herein but not defined have the same meanings as are ascribed to them in the Settlement Agreement.

The Supreme Court of British Columbia has certified the class action for the purposes of implementing the proposed settlement. The proposed settlement is a compromise of disputed claims and is not an admission of liability, wrongdoing or fault by the Defendants. The settlement is subject to the approval of the Court.

The Defendants are Trevali Mining Corporation, Ricus Grimbeek, Brendan Creaney, Jill Gardiner, Russell Ball, Aline Cote, Nick Popovic, Jeane Hull, Dan Isserow and Richard Williams.

What is the proceeding about?

The claim alleges, among other things, that certain disclosure documents issued by Trevali Mining Corporation between between October 9, 2020 through to August 15, 2022 contained misrepresentations concerning Trevali's corporate governance practices. The plaintiffs sought to recover damages for Class Members for alleged losses as a result of this conduct. The Defendants deny all of the allegations.

Who are in the Class and affected by the settlement?

The Class consists of "all persons and entities, wherever they may reside or may be domiciled, who purchased or otherwise acquired the common shares of Trevali in the primary market and/or in the secondary market between October 9, 2020 through to August 15, 2022 inclusive, and held some or all of such common shares as of the close of trading on April 14, 2022 and/or August 15, 2022".

The court has appointed Michael Demmer, Rodney Brunk, Tim Kempter and William Williamson as representatives on behalf of the Class. Class Counsel are KND Complex Litigation.

What are the terms of the settlement?

The Settlement provides for the payment of CDN \$2,800,000 (two million and eight hundred thousand dollars) by the Defendants in exchange for a full release of all claims against them by the Class. The payment of the Settlement Amount is not an admission of liability, wrongdoing or fault by the Defendants.

A further hearing will be held on [DATE] to seek approval of the Settlement Agreement by the Court. The hearing will take place in at 800 Smithe Street, Vancouver, B.C., before the Honourable Justice ♦.

If approved, the Settlement will be binding on all members of the Class who do not opt out of the proceeding.

The full settlement terms and court documents are available at [INSERT LINK HERE].

How do I participate?

If you want to be a member of this class action and participate in the settlement, you do not need to do anything. You are automatically included as a member of the Class unless you opt out of the applicable proceeding.

What if I do NOT want to participate?

If you do **not** want to participate in the class action, you may exclude yourself (“opt out”).

In order to opt out, you must complete and sign an opt-out form and deliver it to Class Counsel by mail, courier, or email no later than ♦, 2025. The opt-out form is available at [INSERT LINK HERE].

Details on how to submit the opt-out form can be found in section 12 of the settlement agreement and the opt-out form.

The opt-out form must be emailed to ♦, or mailed or couriered to:

KND Complex Litigation
401 – 2300 Yonge Street Toronto, ON M4P 1E4

Attn: Eli Karp / Sage Nematollahi

Will I receive compensation from this settlement?

Yes. The Settlement Amount, after payment of any fees to Class Counsel and any honorariums to the representative plaintiffs, will be paid to class members in accordance with the Distribution Protocol.

What are the fee arrangements?

Under the terms of their retainer agreement with the representative plaintiffs, Class Counsel will seek approval of a fee of up to 30% of the settlement amount, plus disbursements and applicable taxes. Class Counsel will also seek payment of up to \$[amount] as honorarium for each of the representative plaintiffs.

Class Counsel Fees, disbursements and any payments to the representative plaintiffs are subject to court approval.

Objections

All members of the Class have the right to let the court know of any objection they have to the approval of the Settlement Agreement, Distribution Protocol, Class Counsel fees or honorarium to the representative plaintiffs by delivering a letter or written objection to Class Counsel on or before ◆, 2025.

If a class member wishes to object, the following information must be included in the letter or written objection delivered to Class Counsel:

- (a) the objector's full name, current mailing address, telephone number and email address;
- (b) a brief statement of the nature and reasons for the objection;
- (c) that the objector is a member of the Class in the proof of class membership in the form of a share certificate or other documented proof of shareholding in Trevali purchased or acquired between October 9, 2020 through to August 15, 2022 inclusive and held as of the close of trading on April 14, 2022 and/or August 15, 2022;
- (d) whether the objector intends to appear at the court hearing on their own behalf or through a lawyer, and if by a lawyer, the name, address, telephone number and email address of the lawyer; and
- (e) a statement that the foregoing information is true and correct.

For more information or a copy of the Settlement Agreement, go to [INSERT LINK HERE].

You may also contact Class Counsel at ◆ or ◆ (toll free) or via mail at the address above.

This notice has been authorized by order of the Supreme Court of British Columbia.

SCHEDULE C

[Opt-out Form]

Demmer et al. v. Trevali Mining Corporation et al., SCBC Vancouver Registry No. VLC-S-S-228113 [*Demmer*].

By completing this form, you are choosing not to participate in this proceeding or to receive any benefit from it.

If you opt out, you should be aware that there are strictly enforced time limits within which you must take formal legal action to pursue your own claim. By opting out, you will take full responsibility for taking all necessary legal steps to protect your claim.

If you wish to opt out, you must complete, sign, and deliver this opt-out form to Class Counsel by mail, courier, or email no later than ◆, 2025, along with proof of class membership in the form of a share certificate or other documented proof of shareholding in Trevali Mining Corporation purchased or acquired between October 9, 2020 through to August 15, 2022 inclusive and held as of the close of trading on April 14, 2022 and/or August 15, 2022.

To deliver your opt-out form to Class Counsel, you must email it to ◆, or mail or courier it to:

KND Complex Litigation
401 – 2300 Yonge Street Toronto, ON M4P 1E4

Attn: Eli Karp / Sage Nematollahi

I, _____, (full name) hereby exercise my right to opt out of the class certified in *Demmer*. I confirm my understanding that I will not receive any benefits under the settlement reached in these proceedings, that I am not represented by Class Counsel, and that I will be responsible for protecting my own interests in relation to the claims asserted in those proceedings.

Date: _____, 202_____

Contact information

Address: _____

City: _____

Province: _____

Postal code: _____

Phone number: _____

Email: _____

SCHEDULE D

NO. S-228113
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MICHAEL DEMMER, RODNEY BRUNK, TIM KEMPTER and WILLIAM WILLIAMSON

PLAINTIFFS

AND:

TREVALI MINING CORPORATION, RICUS GRIMBEEK, BRENDAN CREANEY,
JILL GARDINER, RUSSELL BALL, ALINE COTE, NICK POPOVIC, JEANNE HULL,
DAN ISSEROW and RICHARD WILLIAMS

DEFENDANTS

DEFENDANTS

Brought under the *Class Proceedings Act*, RSBC 1996, c 50

BEFORE } THE HONOURABLE JUSTICE ♦ } ___/___/2025

ORDER MADE AFTER APPLICATION

ON THE APPLICATION of the Plaintiffs coming on for hearing before the Honourable Justice Fitzpatrick at the Courthouse at 800 Smithe Street, Vancouver, B.C., on ♦, 2025; on reading the materials filed, including the settlement agreement dated ♦ (“**Settlement Agreement**”); and on hearing ♦ for the Plaintiffs, and ♦ for the Defendants, and on being advised that the Plaintiffs and Defendants consent to this order:

THIS COURT ORDERS that:

1. All capitalized terms in this order have the same meaning as in the Settlement Agreement attached as **Schedule “A”** to this order;

2. The Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class;
3. The Settlement Agreement is approved pursuant to section 35 of the *Class Proceedings Act*, RSBC 1996, c 50, and shall be implemented and enforced in accordance with its terms;
4. This order, including the Settlement Agreement, is binding upon all Settlement Class Members, including those persons who are minors or mentally incapable;
5. This action be and is hereby dismissed with prejudice and without costs as against any party;
6. Each Settlement Class Member shall be deemed to irrevocably consent to the dismissal, with prejudice, of any action or proceeding relating to the Released Claims against the Releasees and all such actions or proceedings shall be dismissed, with prejudice;
7. Each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims, as set out in the Settlement Agreement;
8. Each Releasor shall not now or hereafter continue, commence, institute, maintain, assert, or prosecute, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim litigation, investigation, or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum, against any Releasee or any other person or third party who may claim contribution or indemnity, or claim over other relief, from any Releasee, whether pursuant to the *Negligence Act*, RSBC 1996, c 333 or other legislation or at common law or equity, including under the laws of any foreign jurisdiction, in respect of any Released Claim; and
9. For purposes of administration and enforcement of the Settlement Agreement and this Order, this Court retains an ongoing supervisory role and jurisdiction to administer,

supervise, construe and enforce the Settlement Agreement and this Order, subject to the terms and conditions set out in the Settlement Agreement and this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER

Signature of Sage Nematollahi
Lawyer for the Plaintiffs

By the Court:

Signature of Mary Buttery, KC
Lawyer for the Defendants
