

28-May-25

REGISTRY

This is the first affidavit of
Tim Kempter in this case,
and was made
this 23rd day of April, 2025

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

AFFIDAVIT OF TIM KEMPTER

I, Tim Kempter, residing in Zürich, Switzerland, **AFFIRM:**

1. I am a one of the Representative Plaintiffs in this class action, and a member of the Ad Hoc Committee of the Shareholders ("**Ad Hoc Committee**") of Trevali Mining Corporation ("**Trevali**"), who were appointed as Representative Shareholders by the Court in the insolvency proceedings of Trevali under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA Proceedings**"). I have personal knowledge of the matters to which I depose herein. Where my knowledge is based on information I have obtained from others, I have so indicated and believe that information to be true.

2. I make this affidavit in support of an application for Orders of this Honourable Court approving a proposed settlement achieved in this matter on March 11, 2025 ("**Proposed**

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Settlement"), approving the proposed plan of allocation of the net settlement proceeds (**"Proposed Plan of Allocation"**), and approving my lawyers' fees and disbursements.

3. No portion of this affidavit is intended to waive, nor should it be construed as a waiver of, attorney-client, litigation or other privilege.

A. Background

4. On August 15, 2022, in conjunction with the release of its operational and financial results for the second quarter of 2022, Trevali disclosed to the market that it was facing significant financial and operational challenges.

5. On August 19, 2022, Trevali commenced the CCAA Proceedings in this Court.

6. On August 22, 2022, I retained KND Complex Litigation (**"Class Counsel"**) in relation to the CCAA Proceedings, in order to advance the claim on behalf of Trevali's shareholders within the CCAA Proceedings or such other proceedings, including a class proceeding, an oppression claim, a derivative claim or a combination thereof as appropriate. A redacted copy of the contingency fee agreement dated August 22, 2022, is attached hereto as **Exhibit "A"**.

7. On March 11, 2025, the parties executed the Proposed Settlement.

8. On March 17, 2025, this Honourable Court granted an order, amongst other things, certifying this action as a class proceeding for settlement purposes, and appointing me as a Representative Plaintiff on behalf of a Class defined as follows:

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.

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B. My Investment in Trevali's Securities

9. As at August 15, 2022, I held 200,000 shares of Trevali. I continued to hold my Trevali shares as at August 19, 2022, when Trevali commenced the CCAA Proceedings, and its securities were delisted. My Trevali shares are now worthless. I have incurred significant financial damages on my investment in the securities of Trevali.

C. My Involvement in These Proceedings

10. I have been involved in these proceedings since the very outset. The steps I have taken in relation to this matter include the following.

11. On September 29, 2022, my Counsel, Sage Nematollahi, delivered correspondence to Counsel to FTI Consulting Canada Inc. in its capacity as the Court-appointed monitor in the CCAA Proceedings ("**Monitor**"), as well as Counsel to Trevali and Counsel to the directors of Trevali, attaching a draft, proposed Notice of Civil Claim. In this correspondence, Mr. Nematollahi raised the issue that certain of the claims to be asserted on behalf of Trevali's shareholders faced imminent statutes of limitations.

12. On October 6, 2022, I alongside the other members of the Ad Hoc Committee brought an application for a representation order within the CCAA Proceedings. As part of this application, the Court was provided with the draft, proposed Notice of Civil Claim, amongst other material. Subsequent discussions amongst the parties resulted in an agreement that I, and the other members of the Ad Hoc Committee, may proceed to file the proposed Notice of Civil Claim. The Court was accordingly apprised of these arrangements during a hearing within the CCAA Proceedings on October 6, 2022.

13. On October 7, 2022, the Notice of Civil Claim was accordingly filed in this action. Although, due to the stay of proceedings in place for the benefit of Trevali and its directors, no active steps were taken to advance this action.

14. Even though no active steps were taken in the class action, active steps were consistently taken within the CCAA Proceedings to preserve, advance and resolve the claims of the shareholders of Trevali. Significant discussions were held amongst the

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parties, through their Counsel. I was kept apprised of those discussions and provided directions and instructions regarding the progress of the matter.

15. Those efforts culminated in a renewed application for a shareholder representation order, which was brought within the context of an application by Trevali for a claims process order.

16. On March 29, 2023, the Court granted a shareholder representation order in conjunction with a claims process order.

17. On April 19, 2023, within the authority and pursuant to the Court's claims process order, the Ad Hoc Committee filed a claims package on behalf of the affected shareholders of Trevali.

18. Subsequently, my Counsel was engaged in significant discussions with the Counsel to the Monitor as well as Counsel to Trevali and its directors in relation to the determination of the shareholders' claim. The Monitor extended the time to respond to the shareholders' claim several times. I was kept apprised on those developments and occasionally provided comments, including with respect to the litigation strategy and direction. The significant discussions amongst the parties over the course of April 2023 through to approximately March 2024 resulted in the agreement amongst the parties to address the shareholders' claim through an alternative procedure, including in the first instance a mediation. This was reflected in a shareholders claim order of this Court dated April 26, 2024.

19. After the Court granted the shareholders' claim order, my Counsel embarked on the mediation process, which included the review of select internal documents of Trevali. In the course of this process, I was kept apprised of the developments, received briefings and recommendations from my Counsel regarding the litigation strategy, and provided my views. In forming these views, I consistently received updates from my Counsel in relation to the evidence in support of the claim, or such evidence that may support a defence, as well as other legal issues in play given the highly complex CCAA Proceedings and the further realities of Trevali's insolvency.

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20. On December 10, 2024, the mediation was held in Toronto. Although I did not participate in the mediation in person, I was available and received updates from my Counsel immediately after the conclusion of the mediation. I understood that the mediation was not successful, and the parties were preparing for continued litigation.

21. Later on in December 2024, I was advised by my Counsel that a settlement in principle had been reached amongst the parties consistent with the instructions I had provided at the time of the mediation.

D. Settlement Agreement and Distribution Protocol

22. The settlement, which is reflected in the settlement agreement dated March 11, 2025, is the product of significant discussions and negotiations over approximately 2 years, in which I was involved on an ongoing basis. I observed, and participated in those discussions, as those negotiations progressed and contributed to them at the appropriate occasions.

23. I have generally reviewed the terms of the Proposed Settlement and the Proposed Plan of Allocation. Although I do not have legal expertise, I have a general understanding of the principal terms of the Proposed Settlement and the Proposed Plan of Allocation, which provide as follows:

- a. the Defendants' insurers will pay \$2.8 million in full and final settlement of the claims asserted against the Defendants in these proceedings. The terms of the releases are consistent with the releases granted in settlements of similar class actions;
- b. the settlement fund, after having deducted the legal fees and costs, and applicable taxes, as may be approved by the Court, will be available for distribution amongst eligible shareholders;
- c. to be eligible to claim compensation, eligible Class Members must submit a Claim Form by a specified date;

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d. the manner of the determination of each eligible shareholder's compensation is outlined in the Proposed Plan of Allocation.

24. In my consideration of the Proposed Settlement, I have considered the fact that the Proposed Settlement has been achieved within the CCAA Proceedings. It is my understanding that in an insolvency proceeding, it is normally possible that the shareholders would not receive anything, as they rank behind the secured and other creditors and there are usually not sufficient funds to satisfy the claims of other creditors.

25. In light of the foregoing considerations, and having been closely involved in these proceedings for approximately 2.5 years, I do believe that the Proposed Settlement is fair and appropriate to shareholders of Trevali.

26. I also do believe that the Proposed Plan of Allocation provides for a workable methodology based on objective criteria to efficiently distribute the net proceeds of the Proposed Settlement, and that it properly takes into account the relative strengths and weaknesses of the various categories of the claims, and believe that it is fair and appropriate. I would therefore respectfully request that this Honourable Court approve the Proposed Settlement and the Proposed Plan of Allocation.

E. Class Counsel Fees and Disbursements

27. Even though I have incurred a substantial financial loss on my investment in the shares of Trevali, I did not have the financial resources to personally pay for the lawyers' fees and the costs of these proceedings. My investment loss, although substantial, did not justify that I personally pay for the significant costs and expenses of the litigation of this type of complex class actions. As a result, from the outset, Class Counsel undertook this matter on a contingency fee basis.

28. My contingency fee agreement with Class Counsel provides that in the event of success, and subject to approval of this Court, my lawyers would be seeking 30% of the gross recovery to be paid to them on the account of their fees. Given the settlement consideration of \$2.8 million, my lawyers' fee request would be equal to \$840,000. I am advised by my Counsel, Mr. Nematollahi, that Class Counsels' actual time on this matter

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is approximately \$650,000. Therefore, a fee request of \$840,000 would amount to approximately a 1.3 multiplier on my lawyers' time.

29. Given Class Counsel took on this matter a contingency basis, and the significant risks and uncertainties involved in the action, I do believe that a fee request of \$840,000 would be fair and reasonable, and respectfully request that this Honourable Court approve same.

30. My contingency fee agreement with Class Counsel also provides that in the event of success, my lawyers would ask that the Court approve that their out-of-pocket costs and disbursements be paid to them from the gross settlement proceeds. I am advised by Mr. Nematollahi that Class Counsel expect to request no more than \$65,000 in disbursements, which costs are incurred most notably in relation to an expert opinion, mediation costs, agent fees, court filing fees, costs of notice in relation to the Court's representation order dated March 29, 2023 as well as the costs of notice in relation to the preliminary approval of the settlement, travel costs and other usual costs incurred to advance the action over the past 2.5 years. This request seems reasonable to me.

31. I would therefore support my lawyers' request for approval of their fees and expenses, and respectfully request that this Honourable Court approve same.

F. Remote Commissioning of This Affidavit

32. Please note that in commissioning this affidavit the deponent was not physically present before the commissioner but was linked with the commissioner utilizing video technology and the process described below was utilized to remotely commission an affidavit.

33. While connected via video technology, the deponent showed the commissioner the front and back of the deponent's current government-issued photo identification and the commissioner compared the video image of the deponent and the information in the deponent's government issued photo identity document. The commissioner was reasonably satisfied that it was the same person and that the document was valid and

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current. The commissioner took a screen shot of the front and back of the deponent's government-issued photo identity document and retained it.

34. The commissioner and the deponent both had a copy of the affidavit, including all exhibits, before each of them while connect via video technology.

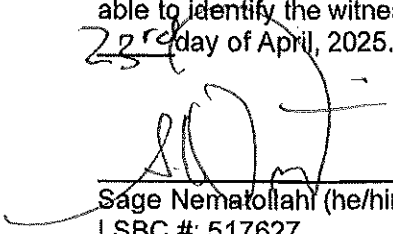
35. The commissioner and the deponent reviewed each page of the affidavit and exhibits to verify that the pages were identical and initialed each page in the lower right corner.

36. At the conclusion of the review, the commissioner administered the oath, and the deponent swore or affirmed that the deponent had read the affidavit, understood the affidavit, and swore or affirmed the truth of the facts, and the commissioner watched the deponent sign the deponent's name to the affidavit.

37. The deponent sent the signed affidavit with exhibits electronically to the commissioner.

38. Before completing the affidavit, the commissioner compared each page of the copy received from the deponent against the initialed copy that was before the commissioner in the video conference and affixed the commissioner's name to the jurat only upon being satisfied that the two copies were identical.

AFFIRMED BEFORE ME via video
technology at the City of Toronto, in
the Province of Ontario, while I was
able to identify the witness this
23rd day of April, 2025.

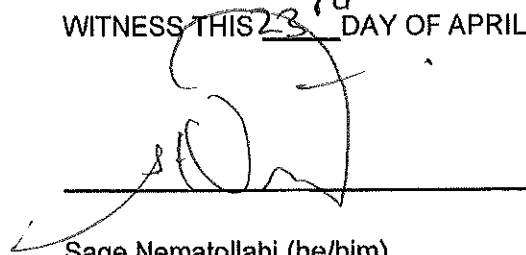

Sage Nematollahi (he/him)
LSBC #: 517627

A Commissioner of oaths.


Tim Kempter

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THIS IS EXHIBIT "A" MENTIONED AND
REFERRED TO IN THE AFFIDAVIT OF TIM
KEMPTER, AFFIRMED BEFORE ME VIA
VIDEO TECHNOLOGY AT THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO,
WHILE I WAS ABLE TO IDENTIFY THE
WITNESS THIS ^{23rd} ~~23~~ DAY OF APRIL, 2025.

A handwritten signature in black ink, appearing to be 'Sage Nematollahi', is written over a horizontal line.

Sage Nematollahi (he/him)
LSBC #: 517627
A Commissioner of oaths.

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KND COMPLEX LITIGATION
1186 Eglinton Ave West
Toronto, Ontario
M6C 2E3

CONTINGENCY FEE RETAINER AGREEMENT
MADE AS OF AUGUST 22, 2022

In re: Trevali Mining CCAA Proceedings and Securities Litigation

FROM:

Tim Kempter
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

TO:

Sage Nematollahi
Partner
KND Complex Litigation
1186 Eglinton Ave West
Toronto, ON M6C 2E3
Tel: (416) 537-3529, ext. 2
Email: sn@knd.law

INTRODUCTION

I hereby retain KND Complex Litigation ("Counsel") to pursue a claim on behalf of me and a proposed class of investors of Trevali Mining Corporation ("Trevali") who held Trevali's shares as of the close of trading on August 15, 2022 ("Class" or "Class Members").

I understand and acknowledge that the Class's claim will be for recovery of compensation for the damages sustained by the Class upon announcements made by Trevali on August 15, 2022 regarding the various operational challenges it had faced and that it would default on its debt ("Claim").

I understand and acknowledge that the Claim will be pursued against Trevali and/or any of its directors, officers and/or affiliates, as appropriate, in Counsel's discretion.

I understand and acknowledge that the Claim will be initially pursued within the proceedings pursuant to the *Companies Creditors Arrangement Act*, RSC 1985, c C-36, concerning Trevali and certain of its related entities pending in the Supreme Court of the Province of British Columbia ("CCAA Proceedings"). Counsel may determine in their discretion to pursue the Claim in such

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other forum and within such other proceedings, including a class proceeding, an oppression claim, a derivative claim or a combination thereof as appropriate.

AD HOC COMMITTEE OF TREVALI SHAREHOLDERS

I understand and agree that I am one of the initial members of an ad hoc committee of shareholders of Trevali ("Ad Hoc Committee") who will seek standing to represent the Class's Claim in the CCAA Proceedings.

The Ad Hoc Committee's composition will be determined by Counsel in their discretion.

The Ad Hoc Committee will make major decisions concerning the prosecution of the Class's Claim upon consultation with Counsel by simple majority of votes, always bearing in mind the best interests of the Class.

I acknowledge that Counsel will take the necessary steps to ensure that there is no apparent conflict in representing the Ad Hoc Committee members.

I acknowledge and agree that some general personal information, such as my name and country of residence, may be shared among members of the Ad Hoc Committee for the purposes of litigating this matter.

CONTINGENCY FEE

The Client will not be responsible for the costs and expenses of the prosecution of the Claim or Counsel's professional fees.

I understand and agree that the Claim will be pursued pursuant to this Contingency Fee Retainer Agreement ("Agreement").

Counsel shall only be paid in the event that the Claim is successful in recovering compensation for the benefit of the Class, including recovery of damages, interest, costs and other compensation that the Class recovers by way of judgment or settlement ("Claim Proceeds") in accordance with the terms of this Agreement.

In the event of success, Counsel will seek approval of the payments of their fees, disbursements and applicable taxes, as outlined below. The amounts to be allowed and approved by the Court shall be paid as a first charge against the Claim Proceeds.

For greater clarity, Claims Proceeds means any and all value due to and/or received by, directly or indirectly, on behalf of or in lieu of payment, by the Class in connection with or arising out of the Claim as a result of any judgment, award, order, settlement arrangement or compromise whatsoever, including the value of any returned or cancelled shares, and the payment of any damages, compensation, interest, restitution, recovery, judgment sum, arbitral award, settlement sum, compensation payment, costs and interest on costs, whether in monetary or non-monetary form (including vouchers or credits), whether actual or contingent.

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i) Contingency Fee Calculation

I understand and agree that Counsel shall be entitled to a legal fee, as compensation for their professional services, which shall be equal to 30% fee of the Claim Proceeds.

In no circumstances will Counsel recover more in fees than the Class Members, in aggregate, recover as damages or receives by way of settlement.

ii) Disbursement Expenses

I understand and agree that, in addition to the legal fees, as outlined above, Counsel shall be entitled to recover reasonable disbursements incurred, along with interest which has accrued on such disbursements, and applicable taxes. Disbursements include, but are not limited to, the following: filing fees, cost of investigators, expert witness fees, discovery transcripts, court costs and travel costs, photocopying and facsimile costs.

iii) Example Contingency Fee and Disbursements Calculation

Assuming the Claim results in a recovery in the amount of \$10 million for the benefit of the Class Members, and assuming Counsel incurs \$150,000 in out-of-pocket expenses inclusive of interest and applicable taxes, subject to the Court's approval, the legal fees and expenses shall be calculated as follows:

(1) Claim Proceeds	\$10,000,000
(2) Legal Fees (30% of the recovery)	\$3,000,000
(3) Applicable Taxes on Legal Fees	\$390,000
(4) Out of Pocket Expenses (inclusive of taxes)	\$150,000
(5) Total Legal Fees and Expenses ((2)+(3)+(4))	\$3,540,000
(6) Payable to the Class Members ((1)-(5))	\$6,460,000

CONTINGENCY FEE SUBJECT TO COURT APPROVAL

I understand that this Agreement and any fees to be awarded pursuant to the Agreement shall be subject to the approval of the Court, which must be satisfied that the overall fees awarded are fair and reasonable having regard to a number of factors, including the risk of taking the case on a contingency basis, the complexity of the case, and the results achieved.

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LITIGATION FUNDING AND INDEMNIFICATION AGAINST ADVERSE COSTS

The Client will not be personally responsible for the costs of prosecution of the Claim or adverse costs awards. Counsel hereby indemnify the Client against any adverse costs awards.

Counsel, in their discretion, may seek third-party litigation funding and/or indemnification against adverse costs awards from available sources, including the Law Foundation of Ontario's Class Proceedings Fund, any available equivalent resources in other Canadian provinces, or third-party litigation funders. In the event that the Class Proceedings Fund provides funding in relation to the prosecution of the Claim, pursuant to Regulation 771/92, it may be entitled to up to 10% of the Claim Proceeds. In the event that third-party litigation funding is secured, the third-party funder may be entitled to up to 10% of the Claim Proceeds, or such other terms as the Court may permit and approve.

SETTLEMENT

I understand that the Claim may be resolved at any stage of the proceeding where a settlement that is fair and reasonable is achieved.

I understand and acknowledge that a settlement will be effective only upon its being approved by the Court.

DIRECTION

I agree and direct that all Claim Proceeds be paid to Counsel in trust, and hereby authorize Counsel to withdraw the amounts owing to it pursuant to the Agreement and subject to Court approval, with the balance payable to the Class, as may be directed by the Court.

TERMINATION OF THIS AGREEMENT

I understand and agree that, should the Client wish to withdraw from its role as a representative plaintiff, Counsel will continue the Claim and will seek to replace the Client with another Trevali shareholder as necessary.

I acknowledge and agree that, in the event that the Client engages other lawyers in relation to this matter, Counsel is entitled to payment of their fees, disbursements and applicable taxes in accordance with the terms of this agreement.

I acknowledge and agree that Counsel may seek to discontinue this proceeding and terminate this agreement at no cost to the Client or the Class if Counsel determine that the Claim is no longer financially or legally viable.

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This Agreement shall automatically expire when the Claim is resolved by way of final order of the Court.

ACKNOWLEDGMENTS

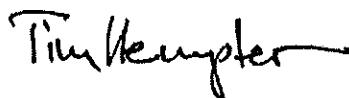
I acknowledge that Counsel and I have discussed:

- i) options for retaining Counsel other than by way of contingency fee agreement, including retaining Counsel by way of hourly-rate retainer;
- ii) that Counsel has advised me that hourly rates may vary among solicitors and that I can speak with other solicitors to compare rates;
- iii) that I have chosen to retain Counsel by way of a contingency fee agreement; and
- iv) that I understand that all usual protections and controls on retainers between a solicitor and client, as defined by the Law Society of British Columbia and the common law, apply to this Agreement.

I confirm that I have received an explanation as to fee structure and costs associated with my claim(s), all in accordance with the terms of this Agreement.

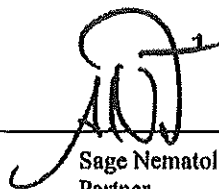
22. August 2022

Dated: _____



Tim Kempter

Dated: Aug 22, 2022



Sage Nematollahi
Partner
KND Complex Litigation
Toronto, Ontario

In re: Trevali Mining – TK Contingency Fee Retainer; August 22, 2022
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SCHEDULE A

*LSO Client Identification and Verification Requirements By-Law 7.1, Operational
Obligations and Responsibilities – Individual Client*

Client Identification/Verification Information (* = Mandatory Information)

Client's Full Legal Name(s)*:	Tim Kempter
Home Address*:	[REDACTED] [REDACTED] [REDACTED]
Home Phone*:	[REDACTED]
Cell Phone:	[REDACTED]
Occupation(s)*:	
Business Address* (if applicable):	
Business Phone* (if applicable):	
Email Address(es):	[REDACTED]
Client Verification* (a copy of original, if applicable includes third party beneficiary or principal): ▪ Passport ▪ Driver's License ▪ Birth Certificate ▪ Health Card	[REDACTED] [REDACTED]

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