

This is the second affidavit of Hadi Davarinia in this case and was made on October 3, 2022.

No. S-226670
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

**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, AS
AMENDED 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.**

PETITIONERS

**AFFIDAVIT OF HADI DAVARINIA
(Affirmed on October 3, 2022)**

I, HADI DAVARINIA, RESIDING IN TORONTO, ONTARIO, AFFIRM THAT:

1. I am a lawyer with the law firm of KND Complex Litigation, which is Counsel to the Ad Hoc Committee of Shareholders of Trevali Mining Corporation ("**Trevali**"). I have personal knowledge of the facts and matters to which I depose herein. Where my knowledge is based on information I have obtained from others, I have identified the source of that information, and believe it to be true.
2. I previously affirmed an affidavit in connection with this matter, dated August 24, 2022. This affidavit supplements my first affidavit.

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) The Proposed Securities Class Action

4. On September 29, 2022, the Ad Hoc Committee of Trevali Shareholders delivered to the Monitor, the Petitioners and the directors of Trevali the draft of a proposed Notice of Civil Claim with respect to a proposed multijurisdictional class proceeding asserting statutory claims for violation of securities laws (the **“Proposed Securities Class Action”**).
5. Attached hereto as **Exhibit “A”** is a copy of a letter from Mr. Sage Nematollahi to Counsel to the Monitor, the Petitioners and the directors of Trevali, dated September 29, 2022, which encloses the draft of the proposed Notice of Civil Claim.
6. The Proposed Securities Class Action arises out of the misrepresentations in the disclosure documents of the Defendant Trevali issued between October 9, 2020 through to August 15, 2022, inclusive (**“Class Period”**).
7. The Proposed Securities Class Action is intended to be brought against Trevali (as the issuer) and certain of its current or former directors and officers.
8. In the Proposed Securities Class Action, the Applicants allege that Trevali’s core disclosure documents issued during the Class Period, including several prospectuses, annual information forms and management information circulars, contained a misrepresentation with respect to Trevali’s corporate governance practices.
9. Specifically, the Proposed Securities Class Action alleges that statements contained in Trevali’s core disclosure documents constituted a misrepresentation as Trevali’s senior management and directors failed to exercise care and oversight to ensure that Trevali had, maintained or

implemented effective policies and procedures to manage core, mission-critical aspects of Trevali's business concerning:

- a. Health and safety;
- b. Corporate governance and risk management; and
- c. Internal control systems and disclosure controls and procedures.

10. The Proposed Securities Class Action is to be brought 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 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, except the Excluded Persons;

(hereinafter, the "**Class**", "**Class Members**" or "**Securities Claimants**").

11. The **Excluded Persons** are:

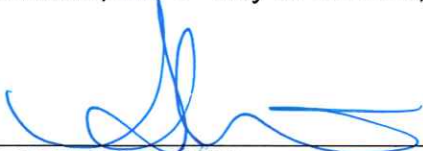
- a. Trevali and its current or former directors, officers, subsidiaries, partners, affiliates, legal representatives, predecessors, successors and assigns;
- b. Ricus Grimbeek, Brendan Creaney, Jill Gardiner, Russell Ball, Aline Cote, Nick Popovic, Jeane Hull, Dan Isserow and Richard Williams; and
- c. Glencore plc, Glencore International AG, Glencore AG and Glencore Canada Corporation, and their directors, officers, subsidiaries, partners, affiliates, legal representatives, predecessors, successors and assigns.

12. The Proposed Securities Class Action asserts the following causes of action:
- a. on behalf of the Class Members who purchased or acquired Trevali's common shares pursuant to the Prospectus Supplement dated November 25, 2020 to a Short Form Base Shelf Prospectus dated November 19, 2020, the statutory right of action for misrepresentation in a prospectus pursuant to section 131 of the *Securities Act*, RSBC 1996, c 418, as amended ("**Securities Act**") and, if necessary, the concordant provisions of the securities legislation of the other Canadian jurisdictions;
 - b. on behalf of the Class Members who purchased or acquired Trevali's common shares in the secondary market, the statutory right of action for misrepresentation in the secondary market pursuant to sections 140.3(1) and 140.5 of the *Securities Act* and, if necessary, the concordant provisions of the securities legislation of the other Canadian jurisdictions; and
 - c. on behalf of all Class Members, an oppression claim pursuant to section 227 of the *Business Corporations Act*, SBC 2002, c 57.
13. The Proposed Securities Class Action seeks to recover compensation in the amount of \$56 million for the Class's damages and losses.
14. Pursuant to section 140 of the *Securities Act*, the claim pursuant to section 131 of the *Securities Act* is subject to a 180-day statute of limitations, which expires on October 13, 2022.
15. Accordingly, the Ad Hoc Committee of Trevali Shareholders intends to file the Notice of Civil Claim in accordance with paragraphs 18 and 22 of this Court's Initial Order dated August 19, 2022.

B) Recent Developments

16. Mr. William Williamson has been added as the fourth member of the Ad Hoc Committee of Trevali Shareholders. Based on our conversations with Mr. Williamson and having reviewed the records of his transactions, we understand that Mr. Williamson resides in British Columbia, purchased Trevali's common shares in the secondary market during the proposed class period, incurred damages and losses in his investment, and that he does not have a conflict of interests with the other members of the proposed Class.
17. We have been consulting with Counsel to the Monitor, Counsel to the Petitioners and Counsel to the directors of Trevali regarding the subject matter of this application. We expect to be able to provide an update to the Court regarding those discussions at the hearing of the application.

AFFIRMED BEFORE ME at Toronto,)
Ontario, this 3rd day of October, 2022.)

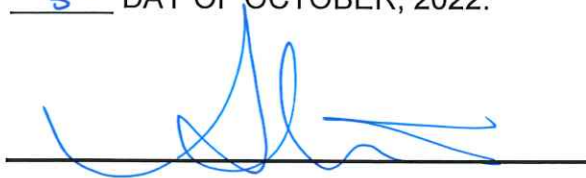


TAEK SOO SHIN)
LSO # 85691Q)
A COMMISSIONER OF OATHS)



Hadi Davarinia

THIS IS EXHIBIT "A" MENTIONED AND
REFERRED TO IN THE AFFIDAVIT OF
HADI DAVARINIA, AFFIRMED BEFORE
ME AT THIS CITY OF TORONTO, THIS
3RD DAY OF OCTOBER, 2022.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above a solid black horizontal line.

TAEK SOO SHIN
LSO # 85691Q
A COMMISSIONER OF OATHS



Sage Nematollahi
1186 Eglinton Ave W
Toronto, ON M6C 2E3
416 537 3529, ext. 2
sn@knd.law

September 29, 2022

DELIVERED VIA EMAIL

John Sandrelli
Dentons
250 Howe Street 20th Floor
Vancouver British Columbia V6C 3R8
Counsel to the Monitor

Peter Rubin
Blake, Cassels & Graydon LLP
595 Burrard Street P.O. Box 49314 Suite
2600, Three Bentall Centre Vancouver
BC V7X 1L3 Canada
Vancouver BC V7X 1L3
Counsel to the Petitioners

Mary Buttery, K.C.
Osler, Hoskin & Harcourt LLP
1055 West Hastings Street
Suite 1700, The Guinness Tower
Vancouver, BC V6E 2E9
*Counsel to the Directors of Trevali
Mining Corporation*

Dear Counsel:

**Re: In re CCAA and Trevali Mining Corporation et al, No. S-226670
And In re a proposed securities class proceeding on behalf of a class
of shareholders of Trevali Mining Corporation**

As you know, we are Counsel to an Ad Hoc Committee of shareholders of Trevali Mining Corporation (“**Trevali**”).

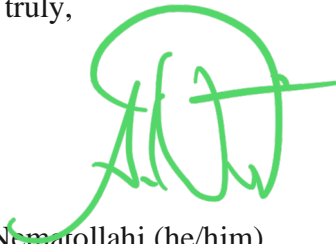
We are enclosing herewith the draft of a Notice of Civil Claim asserting claims for securities law violations against Trevali and certain of its current or former directors and officers.

Pursuant to section 140 of the *Securities Act*, RSBC 1996, c 418, the claim pursuant to section 131 of the *Securities Act* is subject to a 180-day statute of limitations, which expires on October 13, 2022.

Accordingly, we intend to file this claim pursuant to paragraphs 18 and 22 of the Court's Initial Order dated August 19, 2022.

Please note that we intend to bring this letter and its enclosure to the Court's attention at the hearing of the application set for October 6, 2022.

Yours truly,

A handwritten signature in green ink, appearing to be 'Sage Nematollahi', written over a circular stamp or mark.

Sage Nematollahi (he/him)
KND Complex Litigation
Counsel to the Ad Hoc Committee of Shareholders

Enclosure.

cc. Eli Karp & Taek Soo Shin (*KND Complex Litigation, by email*)

NO.

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

[DRAFT] NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiffs for the relief set out in Part 3 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

DRAFT NOTICE OF CIVIL CLAIM

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiffs,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

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CLAIM OF THE PLAINTIFFS AND THE CLASS

PART 1: OVERVIEW OF THE ACTION

1. This is a proposed, multi-jurisdictional securities class proceeding. It arises out of the misrepresentations in the disclosure documents of the Defendant Trevali Mining Corporation (“**Trevali**”), issued between October 9, 2020 through to August 15, 2022, inclusive (“**Class Period**”).
2. At the relevant time, Trevali was a base-metal mining company focused on the production of zinc and lead concentrate from three operational assets:
 - a) the Perkoa Mine in Burkina Faso, in which Trevali has a 90% interest;
 - b) the Rosh Pinah Mine in Namibia, in which Trevali has a 90% interest; and
 - c) the Caribou Mine in New Brunswick, which is wholly owned by Trevali.
3. In 2022, Trevali’s operations were materially and negatively impacted as a result of a series of adverse events that were the result of Trevali’s senior management and directors’ failure to comply with their oversight duties in relation to Trevali’s core, mission-critical risk management and compliance activities and affairs.
4. On April 16, 2022, Trevali’s Perkoa Mine experienced a major flooding event, which resulted in a significant damage to the mine and the loss of the lives of eight mine workers. Consequently, Trevali suspended operations at Perkoa in April 2022. The flood and subsequent shutdown of Perkoa caused serious financial damages to Trevali, both in terms of lost revenue as well as significant remediation costs, amongst other costs and expenses.
5. Additionally, in the aftermath of the flooding event, Perkoa’s mine manager and its contractor were placed on trial in Burkina Faso, in which it was alleged, amongst other things, that mining activities at Perkoa were carried out in excess or without authorization or in violation of health and safety laws and regulations.

6. During the trial, witnesses testified, amongst other things, that:
 - a) The Perkoa Mine had exceeded the designed depth of the mine, as the structure of the mine's underground pit had been modified from 520 meters to a depth of 710 meters, even though the mine had been originally designed to be operated up to 550 meters of depth;
 - b) In the underground mine, between levels 610 and 710, there were no emergency exits and the operating activities had not been developed; and
 - c) Water flooded into the mine as the mine's safety berm had not been rehabilitated.
7. The eight mine workers who lost their lives were trapped in the deep area of the mine that had not been properly developed.
8. The trial found the mine's manager and contractor guilty of involuntary manslaughter. Subsequently, Trevali announced that it would shut down the Perkoa Mine, as the funds available would not be sufficient to complete the rehabilitation of the mine.
9. The flooding event at Perkoa and its catastrophic consequences on Trevali and its stakeholders were a result of the failure of Trevali's senior management and directors to exercise care and oversight over core, mission-critical risk management and compliance affairs of Trevali.
10. In the aftermath of Perkoa's flooding event, Trevali's financial problems were exacerbated due to operational and production issues at Trevali's other material mineral project, the Caribou Mine.
11. According to Trevali, the operations at the Caribou Mine have been negatively impacted due to what Trevali describes as "low equipment availability and productivity rates with the mining contractors, among other factors."

12. Caribou Mine's operations furthermore became unsustainable due to its operating losses. In January 2021, Trevali entered into a fixed-pricing arrangement with Glencore plc under which Trevali is obligated to deliver 80% of Caribou Mine's zinc concentrate production to the Glencore at the fixed price of US\$1.25 per pound, which is below the market price of zinc and Trevali's all-in sustaining costs of production of zinc. The arrangement was intended to apply through December 2022.
13. The persistent operational problems at the Caribou Mine, and the fact that it is forced to operate at a loss due to the fixed-pricing arrangement with Glencore, are the result of the failure of Trevali's senior management and directors to exercise care and oversight over core, mission-critical risk management and compliance affairs of Trevali.
14. Furthermore, the fixed-pricing arrangement with Glencore was not substantively or procedurally fair, was not in the best interests of Trevali, and it was tainted by conflicts of interests.
15. The fixed pricing arrangement with Glencore was one of the causes that contributed to Trevali's financial and operational collapse in 2022.
16. On August 19, 2022, Trevali filed for protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**"). Subsequently, the trading in Trevali's common shares was halted. On September 6, 2022, Trevali announced that its common shares would be delisted from the Toronto Stock Exchange effective close of market on October 3, 2022.
17. In this action, the Plaintiffs allege that Trevali's core disclosure documents issued during the Class Period, including several prospectuses, annual information forms and management information circulars, contained a misrepresentation with respect to Trevali's corporate governance practices.
18. As elaborated herein, specific statements contained in Trevali's core disclosure documents constituted a misrepresentation as Trevali's senior management and

directors failed to exercise care and oversight to ensure that Trevali had, maintained or implemented effective policies and procedures to manage core, mission-critical aspects of Trevali's business concerning:

- a. Health and safety;
- b. Corporate governance and risk management; and
- c. Internal control systems and disclosure controls and procedures.

19. This proposed securities class proceeding has been brought 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 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, except the Excluded Persons;

(hereinafter, the "**Class**" or "**Class Members**").

20. The **Excluded Persons** are:

- a) Trevali and its current or former directors, officers, subsidiaries, partners, affiliates, legal representatives, predecessors, successors and assigns;
- b) Ricus Grimbeek, Brendan Creaney, Jill Gardiner, Russell Ball, Aline Cote, Nick Popovic, Jeane Hull, Dan Isserow and Richard Williams (collectively, "**D&O Defendants**"); and
- c) 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.

21. As against the Defendants, the Plaintiffs assert the following causes of action:

- a) on behalf of the Class Members who purchased or acquired Trevali's common shares pursuant to the Prospectus Supplement dated November 25, 2020 to a Short Form Base Shelf Prospectus dated November 19, 2020, the statutory right of action for misrepresentation in a prospectus pursuant to section 131 of the *Securities Act*, RSB 1996, c 418, as amended ("**Securities Act**") and, if necessary, the concordant provisions of the securities legislation of the other Canadian jurisdictions;
 - b) on behalf of the Class Members who purchased or acquired Trevali's common shares in the secondary market, the statutory right of action for misrepresentation in the secondary market pursuant to sections 140.3(1) and 140.5 of the *Securities Act* and, if necessary, the concordant provisions of the securities legislation of the other Canadian jurisdictions; and
 - c) on behalf of all Class Members, an oppression claim pursuant to section 227 of the *Business Corporations Act*, SBC 2002, c 57 ("**Business Corporations Act**").
22. On behalf of themselves and the other Class Members, the Plaintiffs seek to recover compensation in the amount of \$56 million for the damages and losses they and the other Class Members have incurred in their investments in the securities of Trevali.

PART 2: STATEMENT OF FACTS

A. The Plaintiffs

2. The Plaintiff Michael Demmer is a retail investor who resides in New Brunswick. Mr. Demmer acquired Trevali's common shares in the secondary market during the Class Period, and has incurred damages and losses on his investment in those securities.
3. The Plaintiff Rodney Brunk is a retail investor who resides in North Dakota, United States of America. Mr. Brunk acquired Trevali's common shares in the secondary

market during the Class Period, and has incurred damages and losses on his investment in those securities.

4. The Plaintiff Tim Kempter is a retail investor who resides in Zürich, Switzerland. Mr. Kempter acquired Trevali's common shares in the secondary market during the Class Period, and has incurred damages and losses on his investment in those securities.
5. The Plaintiff William Williamson is a retail investor who resides in British Columbia. Mr. Williamson acquired Trevali's common shares in the secondary market during the Class Period, and has incurred damages and losses on his investment in those securities.
6. The Plaintiffs are the members of an Ad Hoc Committee of Trevali's shareholders, which seeks to represent the Class Members in the proceedings pursuant to the CCAA involving Trevali and its subsidiary, Trevali Mining (New Brunswick) Ltd. ("**CCAA Proceeding**").
7. The Plaintiffs seek to be appointed as representatives for the Class in the CCAA Proceeding pursuant to:
 - a. section 11 of the CCAA; and/or
 - b. Supreme Court Civil Rule 20-3(6).
8. If the claims asserted herein are allowed to proceed outside of the CCAA Proceeding and/or in a joint proceeding under the *Class Proceedings Act*, RSBC 1996, c 50 ("**Class Proceedings Act**"), the Plaintiffs seek to be appointed as representatives for the Class under:
 - a. Section 2 generally, or 2(4) specifically, of the *Class Proceedings Act*, and/or
 - b. section 4.1 of the *Class Proceedings Act*.

B. The Defendants

a) Trevali

9. At the relevant time, Trevali was a publicly traded mining company incorporated under the *Business Corporations Act*, and headquartered in Vancouver, B.C.
10. At the relevant time, Trevali was a reporting issuer in British Columbia and in all other Canadian Provinces and Territories.
11. At the relevant time, Trevali's main securities regulator was the British Columbia Securities Commission.
12. At the relevant time, Trevali's common shares traded on the Toronto Stock Exchange, the United States OTC market, the Frankfurt Stock Exchange, and the Lima Stock Exchange.
13. On August 19, 2022, following the events described herein as giving rise to this action, Trevali filed for protection under the CCAA. Trading in the common shares of Trevali was halted on August 22, 2022. Trevali's common shares are set to be delisted from the Toronto Stock Exchange effective October 3, 2022.
14. At the relevant time, the Glencore Entities were Trevali's largest shareholder, beneficially owning approximately 26% of Trevali's issued and outstanding common shares.
15. At the relevant time, the Glencore Entities were the provider of a junior secured lending facility to Trevali.
16. At the relevant time, the Glencore Entities were the sole and exclusive purchaser of one hundred percent of the concentrates produced from Trevali's then-current operations pursuant to "offtake" and related agreements.

17. At the relevant time, the Glencore Entities had a right of first refusal for future concentrate sales produces from any additional properties or assets that Trevali may acquire in the future.

b) D&O Defendants

18. At the relevant time, Ricus Grimbeek was President, a director and Chief Executive Officer of Trevali. Mr. Grimbeek is an experienced mine operator with three decades of progressive experience in the mining industry. Mr. Grimbeek holds a Bachelor of Engineering (Mining) degree from the University of Pretoria, has completed the Management Development Program at the University of Orange Free State, and holds an Advanced Certificate in Mining Ventilation from the Chamber of Mines. Mr. Grimbeek resides in British Columbia.
19. At the relevant time, Brendan Creaney was Chief Financial Officer of Trevali. In that role, Mr. Creaney contributed to the execution of the overall strategic direction of Trevali. Mr. Creaney was accountable for ensuring long-term financial viability of Trevali through proper planning, risk assessment, development of appropriate policies, programs and controls. He was also responsible for leading Trevali's corporate development activities, including seeking out new markets and opportunities and participating directly in national and international marketing sales and activities. Mr. Creaney resides in British Columbia.
20. At the relevant time, Jill Gardiner was a director and Chair of Trevali's Board of Directors. Ms. Gardiner is a professional corporate director with over 20 years of experience in the investment banking industry. Ms. Gardiner holds Bachelor of Science and Master of Business Administration degrees from Queen's University. Ms. Gardiner resides in British Columbia
21. At the relevant time, Russell Ball was a director of Trevali. Mr. Ball has significant experience working in various roles and capacities with publicly traded mining companies. Mr. Ball is qualified as both a Chartered Accountant from the Institute

of Chartered Accountants of South Africa and a Certified Public Accountant in the USA. Mr. Ball resides in British Columbia.

22. At the relevant time, Aline Cote was a director of Trevali. Ms. Cote has extensive mining and technical experience and expertise. Ms. Cote is an officer or employee of the Glencore Entities. She was a nominee director and one of the two directors of Trevali who were appointed to the Board of Directors by the Glencore Entities. Ms. Cote holds a Bachelor of Science degree in geology from Laurentian University and a Master of Business Administration degree from the University of Quebec. Ms. Cote resigned from her position as a director of Trevali on or about August 22, 2022. Ms. Cote resides in Quebec.
23. At the relevant time, Nick Popovic was a director of Trevali. Mr. Popovic is an officer or employee of the Glencore Entities. He was a nominee director and one of the two directors of Trevali who were appointed to the Board of Directors by the Glencore Entities. Mr. Popovic resigned from his position as a director of Trevali on or about August 22, 2022. Mr. Popovic resides in Switzerland.
24. At the relevant time, Jeane Hull was a director of Trevali. Ms. Hull was appointed a director of Trevali as of February 1, 2021. Ms. Hull has over 35 years of operational leadership and engineering experience. Ms. Hull holds a Bachelor of Science degree (Civil Engineering) from South Dakota School of Mines and Technology and a Master of Business Administration degree from Nova Southeastern University. Ms. Hull resides in South Dakota, USA.
25. At the relevant time, Dan Isserow was a director of Trevali. Mr. Isserow has financial and business operations leadership experience. Mr. Isserow holds the Chartered Accountant designation from the Institute of Chartered Accountants of South Africa, and he has completed the ICD Directors' Education Program. Mr. Isserow resides in British Columbia.
26. At the relevant time, Richard Williams was a director of Trevali. Mr. Williams has many years of experience in various executive and directorial roles with publicly

traded mining companies. Mr. Williams holds a Master of Business Administration degree from Cranfield University, a Master's degree in Security Studies from Kings College London, and a Bachelor of Science degree in Economics from University College London.

C. The D&O Defendants' Oversight Duties, Which They Violated

a) Composition, Mandate and Duties of Trevali's Board of Directors

27. At all material times relevant to this action, the Defendants Grimbeek, Ball, Cote, Popovic, Hull (since February 2021), Isserow and Williams were the directors of Trevali.
28. Pursuant to section 142(1)(b) of the *Business Corporations Act*, these Defendants had a duty to exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances.
29. Pursuant to Trevali's Board of Directors Charter, these Defendants had stated responsibilities to:
 - a. supervise the management of the business and affairs of Trevali;
 - b. act with a view to the best interests of Trevali; and
 - c. exercise the care, diligence and skill that reasonably prudent individuals would exercise in comparable circumstances.
30. Trevali's Board of Directors may, and it does, delegate certain of its functions to its Committees, as described below. Nonetheless, the overarching duty of care and oversight described above applied to each director.

b) Composition, Mandate and Duties of the Corporate Governance and Nominating Committee

31. The purpose of Trevali's Board's Corporate Governance and Nominating Committee is to provide a focus on corporate governance that will enhance

corporate performance and ensure, on behalf of the Board of Directors, that the Company's corporate governance system is effective in the discharge of its obligations to the Company's stakeholders.

32. At the relevant time, the Defendants Isserow (Chair), Gardiner, and Williams were the members of the Corporate Governance and Nominating Committee.

33. Pursuant to the Charter of the Corporate Governance and Nominating Committee, these Defendants had stated duties, *inter alia*, to:

- a. with the assistance of management, develop the Company's overall approach to corporate governance issues and, subject to approval by the Board, implement and monitor a system of corporate governance which reflects high standards of corporate governance practices;
- b. undertake an annual review of corporate governance issues and practices as they affect the Company and make a comprehensive set of recommendations to the Board during each calendar year;
- c. advise the Board or any committees of the Board of corporate governance issues which the Committee determines ought to be considered by the Board or any such committee; and
- d. with the assistance of management, oversee the creation of an enterprise risk management register and ensure that risks are allocated to appropriate committees of the Board for monitoring and reporting to the Board.

c) Composition, Mandate and Duties of the Health, Safety, Environment and Community Committee

34. The purpose of Trevali's Board's Health, Safety, Environment and Community Committee is to assist the Board of Directors in fulfilling its oversight responsibilities with respect to the effectiveness of the Company's health, safety, security, environmental, community relations and corporate social responsibility policies and practices.

35. At the relevant time, the Defendants Williams (Chair), Grimbeek, Ball and Hull were members of the Health, Safety, Environment and Community Committee.
36. Pursuant to the Charter of the Health, Safety, Environment and Community Committee, its members' primary duties and responsibilities are, *inter alia*, to:
 - a. discuss the principal health, safety and security risks in the Company's business activities and provide oversight of appropriate systems to manage such risks;
 - b. review and monitor the health, safety and security policies and activities of the Company on behalf of the Board to ensure compliance with applicable laws, legislation and policies as they relate to health, safety and security issues through the receipt of regular reports on the same by management and/or consultants;
 - c. receive and review reports from management on any non-compliance with the health, safety and security policies of the Company or any material non-compliance with any applicable regulatory requirement; and
 - d. report on a timely basis, and in any event following each Committee meeting, to the Board on health, safety and security issues and on the state of compliance with applicable laws and legislation and adherence to the policies of the Company.

d) Composition, Mandate and Duties of the Exploration and Technical Committee

37. The purpose of Trevali's Board's Exploration and Technical Committee is to assist the Board in fulfilling its oversight responsibilities on specific technical matters, including:
 - a. technical, exploration, development, and similarly related aspects, including policies, practices and controls with regard to the Company's mining operations and its development, exploration programs and projects;

- b. technical studies and evaluations of the Company's mineral properties;
 - c. management's preparation of mineral resource and reserve statements for the Company's mineral properties;
 - d. changes to laws and regulations that may impact the Company's mining operations and development and exploration programs and management's response to any such changes; and
 - e. external reporting in relation to the foregoing matters (in conjunction with the Disclosure Committee).
38. The Exploration and Technical Committee was established in August 2021.
39. At the relevant time, the members of the Exploration and Technical Committee were the Defendants Cote (Chair), Grimbeek and Hull.
40. The stated duties of the members of the Exploration and Technical Committee are, *inter alia*:
- a. reviewing management's overall approach to establishing objectives relating to mining operations, development and exploration programs, including construction activities, permitting, budgeting, allocation of resources, steps to be implemented and timing for completion, with a view to advising management about appropriate solutions, actions and risk mitigants;
 - b. receiving regular updates from management on growth initiatives, including reviewing technical-economic studies, including those prepared in accordance with National Instrument 43-101 – Standards of Disclosure for Mineral Projects ("NI 43-101") prepared to support a management request for Board approval;
 - c. reviewing the management of dams;

- d. reviewing life-of-mine plans and annual operating plans prepared by management for the Company's existing mining operations and development and exploration programs with a view to satisfying itself that the assumptions underlying these plans are reasonable;
 - e. reviewing management's assessment of the Company's major operational risk exposure, including a regular review of the top technical risks identified by management, including exploration, geological, mining, geotechnical, metallurgical and other technical issues of concern, and the policies and practices adopted by the Company to mitigate those risks; and
 - f. ensuring that the Company implements best-in-class property development and operating practices and reviewing management's assessment of the Company's operational and exploration performance to:
 - i. assess the technical, cost and overall effectiveness of mine plans, exploration programs, special projects, and make recommendations for improvement, where appropriate;
 - ii. determine if any issues that may be identified as a result of such review are of significance to report to the Board; and
 - iii. review the scope of potential liabilities and the adequacy of the management systems to manage these liabilities.
41. The focus of the Exploration and Technical Committee is revenue generating activities, although its stated responsibilities overlap with that of the Health, Safety, Security and Community Committee.
42. At all material times, the Defendant Cote was Chair and a member of the Exploration and Technical Committee. As a non-independent director and a nominee director on behalf of the Glencore Entities (the junior secured lender, the sole customer and the largest shareholder of Trevali), the Defendant Cote had a conflict of interests in serving in that capacity.

43. At all material times, the Defendant Grimbeek was a member of the Exploration and Technical Committee. As President, Chief Executive Officer and a non-independent director, the Defendant Grimbeek had a conflict of interests in serving in that capacity.

e) CEO and CFO's Duties to Design, Maintain and Evaluate the Effectiveness of Trevali's Disclosure Controls and Procedures

44. As senior officers of Trevali, the Defendants Grimbeek and Creaney had obligations to design Trevali's disclosure controls and procedures, or to cause them to be designed, to provide reasonable assurance that:
- a. material information relating to Trevali was made known to Trevali's senior management and directors; and
 - b. information required to be disclosed by Trevali in its annual filings, interim filings or other reports filed or submitted by it under securities legislation was recorded, processed, summarized and reported within the time periods specified in securities legislation.
45. Additionally, the Defendants Grimbeek and Creaney had duties to evaluate the effectiveness of Trevali's disclosure controls and procedures.
46. At all materials times relevant to this action, the Defendants Grimbeek and Creaney represented and certified that they had designed, or caused to be designed, Trevali's disclosure controls and procedures in accordance with the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). They, furthermore, certified that they had evaluated Trevali's disclosure controls and procedures in accordance with the COSO standards, and determined that those controls and procedures were effective.

D. The D&O Defendants Violated Their Oversight Duties

a) The D&O Defendants failed to exercise care and oversight necessary to ensure the effectiveness of Trevali's health, safety and security policies and practices

47. On Saturday, April 16, 2022, Trevali reported that following heavy rainfall, a major flooding event had occurred at its Perkoa Mine. Eight mine workers were reported missing underground. As a result, mining and milling operations at the Perkoa Mine were suspended.
48. On April 21, 2022, Trevali provided further updates in relation to the flooding event at the Perkoa Mine, reporting that the rainfall had resulted in a flash flood that breached purportedly protective berms surrounding the mine's open pit. Trevali, furthermore, reported that the eight missing mine workers remained unaccounted for. Mining and milling operations at Perkoa remained suspended and they were expected to remain suspended for the foreseeable future. Trevali also reported that following these events, Trevali's senior executives had travelled to the Perkoa Mine site to conduct site and area inspections, amongst other efforts in the aftermath of the incident.
49. On May 25, 2022, Trevali reported that it had discovered the bodies of four of the missing mine workers. On June 20, 2022, Trevali reported that it had discovered the bodies of the remaining missing mine workers that had been unaccounted for.
50. On August 15, 2022, Trevali reported that, as a result of an investigation into the flooding event, Trevali was taking several actions to minimize the impacts of future weather events at Perkoa, and prevent any future flooding of the underground operations, including:
 - a. it raised the flood protection berm along the existing berm alignment to protect the open pit against flooding;

- b. it installed an early warning system that provides updated weather reporting, real-time weather and rain monitoring and real-time stream water level indication with automatic triggers when there is a potential flood risk; and
 - c. it improved emergency management plans with the inclusion of predictive triggers such as: predictive alerting and smart IOT sensors that detect changes in water levels and various weather parameters (wind, rain, lightning, pressure) to trigger an evacuation in advance of a significant weather event impacting the site.
51. In its August 15, 2022 news release, Trevali furthermore reported that it is “also reviewing its design infrastructure at its other mine sites and will consider implementing similar measures if deemed appropriate.”
52. Trevali ought to have adopted and implemented these measures at its operating mines before the flooding event at the Perkoa Mine. Trevali created an unsafe working site at the Perkoa Mine by its failure to adopt these security measures, including by failing to rehabilitate or raise the safety berm.
53. On August 22, 2022, Trevali confirmed media reports that a manager of the Perkoa Mine as well as a manager of Trevali’s mining contractor, Byrncut, had been detained by authorities near the mine site in west-central Burkina Faso pending a trial on charges relating to the April 16, 2022 flooding event.
54. The charges were being brought against Nantou Mining (Burkina Faso) S.A., Trevali’s 90% owned subsidiary and the operator of Perkoa, and they included the allegation that Perkoa Mine engaged in mining activities in excess of or without legal authorization, and/or that it violated health and safety regulations.
55. During the trial, witnesses testified, amongst other things, that:
- a. The Perkoa Mine had exceeded the designed depth of the mine, as the structure of the mine’s underground pit had been modified from 520 meters

to a depth of 710 meters, even though the mine had been originally designed to be operated up to 550 meters of depth;

- b. In the underground mine, between levels 610 and 710, there were no emergency exits and the operating activities had not been developed; and
 - c. Water flooded into the mine as the mine's safety berm had not been rehabilitated.
56. The eight mine workers who lost their lives were trapped in the depth of the mine that had not been properly developed, including at the areas around the 640 level and the 670 level.
57. On September 14, 2022, the mine's manager and contractor were found guilty of involuntary manslaughter.
58. On September 24, 2022, Trevali announced that it would shut down the Perkoa Mine, as the funds available would not be sufficient to complete the rehabilitation of the mine.
59. At the relevant time, Trevali's health and safety policies, measures and/or practices were not effective. The D&O Defendants had a duty to exercise appropriate care and oversight to ensure that Trevali's health, safety and security policies and practices were and remained effective. That duty concerned central, mission-critical risk management and compliance matters relating to the core of Trevali's business and operations. The D&O Defendants violated that duty.
- b) The D&O Defendants failed to exercise care and oversight necessary to ensure that Trevali maintained proper and effective corporate governance and risk management policies and practices**
60. Trevali contends that its financial problems were exacerbated due to ongoing challenges with the mine contractors relative to equipment availability and low production rates at the Caribou Mine. To the extent that Caribou Mine's operations were adversely impacted by ongoing equipment, production or

contractor issues, those problems were caused as a result of the D&O Defendants' failure to exercise care and oversight to ensure that the mine properly operated.

61. Trevali's financial problems were also exacerbated as a result of the fact that Caribou Mine operated at a loss due to a fixed pricing arrangements between Trevali and the Glencore Entities, discussed below.
62. On January 15, 2021, Trevali announced that it was restarting the operations at the Caribou Mine following a 9-month care and maintenance period.
63. According to Trevali, to improve the economics of the mine operations, and to reduce Trevali's exposure to commodity price fluctuations, it had entered into a 21-month fixed pricing arrangement with the Glencore Entities. According to Trevali, this arrangement provided that 115 million pounds of payable zinc, representing 80% of Caribou Mine's forecasted zinc production, would be sold to Glencore plc at an average price of US\$1.25 per pound. These arrangements are for the period from March 2021 to December 2022.
64. The below chart demonstrates the reported price of zinc over the past 5 years.



65. The fixed pricing arrangement represents a loss compared to the market price of zinc, as well as Trevali's average all-in sustaining costs of production of zinc.

66. The fixed pricing arrangement constituted a significant, known risk to Trevali's operation that ought to have been properly managed by the D&O Defendants. Trevali's annual information form for fiscal year ended December 31, 2021, filed on March 31, 2022, acknowledged as follows:

The use of derivative instruments involves certain inherent risks including credit risk, market liquidity risk and unrealized mark-to-market risk.

The Company has entered into hedging contracts in respect of a material amount of its forecasted zinc production. The Company uses these contracts to manage the risks associated with, among other things, mineral price volatility. The use of these contracts involves certain inherent risks including: (a) the risk of default on amounts owing to the Company by the counterparties with which the Company has entered into such transactions; and (b) the risk that, in respect of certain derivative products, an adverse change in market prices for commodities will result in the Company incurring an unrealized mark-to-market loss in respect of such contracts. In the event that such any such risks materialize, the Company's future cash flows, profitability, results of operations and financial condition could be materially and adversely affected.

67. The D&O Defendants had a duty to properly manage this risk, which they failed to do.
68. Furthermore, the fixed pricing arrangement with the Glencore Entities was not in the best interests of Trevali, and it was tainted by conflicts of interests.
69. Trevali's disclosure documents suggest that Trevali's entire Board of Directors was involved in the events and in the making of the decisions leading to the re-opening of the Caribou Mine, including the fixed pricing arrangement with the Glencore Entities. The members of the Board at the time included Glencore's

nominee directors, the Defendants Cote and Popovic, both of whom are stated to be members of the senior management team of Glencore plc and/or its related entities.

70. Trevali's disclosure documents indicate that Trevali's Board of Directors failed to establish a special committee in relation to entering into the fixed-pricing arrangement.
71. Trevali's disclosure documents indicate that Trevali's Board of Directors failed to consult with independent financial and/or legal advisors in relation to the fixed pricing arrangement.
72. The conflicts of interests arising out of two nominee directors of Glencore sitting on Trevali's Board of Directors represented a significant, known risk. Trevali's annual information form for fiscal year ended December 31, 2021, filed on March 31, 2022, acknowledged as follows:

The Company's directors and officers may have interests that conflict with the Company's interests.

[...]

As of the date hereof, Aline Cote and Nick Popovic, directors of the Company, are members of the senior management team at Glencore International AG (for the purposes of this paragraph, "Glencore"). Glencore is a significant shareholder of the Company, owning approximately 26% of the Company's issued and outstanding Common Shares. Glencore is also a lender to the Company pursuant to the Glencore Facility (as described above under the heading "Three-Year History – Significant Developments – 2020"). In addition, through off-take agreements, Glencore has agreed to purchase all the concentrates from Caribou, Rosh Pinah and Perkoa and has entered into an Investor Rights and Governance Agreement with the Company that provides Glencore

with certain board nomination rights, anti-dilution rights and enhanced consultation rights relating to the business of the Company. As a result, Ms. Cote and Mr. Popovic have a conflict of interest with respect to the Company's contracts and other dealings with Glencore, which, with respect to matters considered by the Board regarding its contracts and dealings with Glencore, will generally require them to disclose such conflict of interest and abstain from voting on such matters.

73. The D&O Defendants had a duty to properly manage this risk, which they failed to do.
74. At the relevant time, Trevali's corporate governance and risk management policies and practices were not effective. The D&O Defendants had a duty to exercise care and oversight to ensure that Trevali maintained proper and effective corporate governance and risk management policies and practices. That duty concerned central, mission-critical risk management and compliance matters relative to the core of Trevali's business and operations. The D&O Defendants violated that duty.

c) The D&O Defendants failed to exercise care and oversight necessary to ensure that Trevali maintained proper and effective internal control systems and disclosure controls and procedures

75. Due to the circumstances outlined above, at the relevant time, Trevali's internal control systems and disclosure controls and procedures were not effective.
76. The D&O Defendants had a duty to exercise care and oversight to ensure that Trevali maintained proper and effective internal control systems and disclosure controls and procedures. That duty concerned central, mission-critical risk management and compliance matters relative to the core of Trevali's business and operations. The D&O Defendants violated that duty.

E. The Misrepresentations

a) The Impugned Documents

77. The Plaintiffs allege that the following disclosure documents of Trevali contained a misrepresentation:

- a. The Prospectus Supplement dated November 25, 2020 to a Short Form Base Shelf Prospectus dated November 19, 2020, together with the prospectus draft dated November 24, 2020 and the Preliminary Short Form Prospectus dated October 9, 2020 (collectively, the “**Prospectuses**”), including the following documents which were incorporated therein by reference:
 - i. the management information circular of Trevali dated August 6, 2020 regarding the annual general meeting of Trevali’s shareholders to be held on September 16, 2020; and
 - ii. the annual information form for the fiscal year ended December 31, 2019, dated as of March 30, 2020;
- b. the annual information form for the fiscal year ended December 31, 2020, dated as of March 31, 2021;
- c. the management information circular dated April 1, 2021 with respect to the annual and general meeting of Trevali’s shareholders to be held on May 11, 2021;
- d. the annual information form for the fiscal year ended December 31, 2021, dated as of March 31, 2022;
- e. the management information circular dated May 18, 2021 with respect to the annual and general meeting of Trevali’s shareholders to be held on June 29, 2022; and

- f. The Certifications of Annual Filings on Forms 52-109F1 issued and filed by Defendants Grimbeek and Creaney on March 31, 2021 (with respect to fiscal year 2020 annual disclosures) and March 31, 2022 (with respect to fiscal year 2021 annual disclosures).

b) Misrepresentations Contained in Impugned Documents that are Management Information Circulars

78. Trevali's management information circulars purported to provide information regarding Trevali's corporate governance practices, according to the Defendants.
79. The management information circulars contained a section titled "Trevali's Leading Corporate Governance Practices," touting Trevali's corporate governance practices which the Defendants represented to be proper and effective. In that section, the management information circulars contained a statement substantially as follows:

Board Oversight of Strategy and Risk Management: The Board oversees management, strategic and corporate planning and risk management. The Board and its committees receive regular reporting from management on the implementation of the Company's approved strategy, and plans are in place to monitor, manage and report on the principal business risks. The Health, Safety, Environment and Community ("HSEC") Committee has specific responsibility for oversight of environmental and stakeholder risk management.

80. The statements produced above constituted a misrepresentation as the D&O Defendants failed to exercise care and oversight to ensure that Trevali had, maintained or implemented effective policies and procedures to manage core, mission-critical risks relative to its business and operations concerning:
 - a. Health and safety;

- b. Corporate governance and risk management; and
- c. Internal control systems and disclosure controls and procedures.

c) Misrepresentations Contained in Impugned Documents that are Annual Information Forms

81. Trevali's annual information forms contained a section titled "Corporate Governance," which included representations substantially as follows:

Corporate Governance

Many of the Company's directors and executive officers have significant experience conducting business in Canada, Peru, Burkina Faso, and Namibia, gained through their years of service to the Company in their respective roles or principal occupations, as applicable. Certain directors and executive officers have also travelled to Canada, Peru, Burkina Faso, and Namibia on several occasions for various purposes related to the Company's business, including meeting with government officials and representatives from banking and investment firms. Directors and executive officers of the Company visit the Company's operations as they deem to be necessary, often several times a year, to properly manage the Company's business and meet with local management.

As a part of carrying out the responsibilities of their respective offices, it is necessary for the directors and executive officers of the Company to familiarize themselves with the laws, requirements and roles of governments, local business culture and practices, and any differences in banking systems and controls in and between jurisdictions in relation to the Company's foreign operations. Directors and executive officers become aware of these matters on an on-going basis through their skills, experience, education, knowledge, and a combination of written materials, meetings, site

visits, legal and other professional advice, and other briefings and training, as appropriate.

Information is typically communicated to the Company's head office from its other locations of business through typical methods in the English language. There are, however, circumstances where communications and documents relating to the Company's business in foreign jurisdictions are received by the Company in the local language, typically Spanish in Peru, Afrikaans in Namibia, and French in Burkina Faso. Items that are deemed material, including legal documents and communications from government officials, are translated into the English language.

82. These statements constituted a misrepresentation as the D&O Defendants failed to exercise care and oversight to ensure that Trevali had, maintained or implemented effective policies and procedures to manage core, mission-critical risks relative to its business and operations concerning:

- a. Health and safety;
- b. Corporate governance and risk management; and
- c. Internal control systems and disclosure controls and procedures.

d) Misrepresentations Contained in Forms 52-109F1 Certificates of Annual Filings

83. In these Impugned Documents, the Defendants Grimbeek and Creaney certified and represented that Trevali's disclosure documents disclosed all material facts, and that Trevali's internal controls had been designed properly and were effective. That representation was false.

e) Misrepresentations Contained in the Prospectuses

84. Each of the Prospectuses incorporated by reference the following documents, and it contained the misrepresentation alleged herein to have been contained in those documents:
- a. the management information circular of Trevali dated August 6, 2020 regarding the annual general meeting of Trevali's shareholders to be held on September 16, 2020; and
 - b. the annual information form for the fiscal year ended December 31, 2019, dated as of March 30, 2020.
85. Each of the Prospectuses included a statutory Certificate of the Company, which was signed by the Defendants Grimbeek, Creaney, Gardiner and Ball. The Certificate included a representation substantially as follows:
- This short form prospectus, together with the documents incorporated in this prospectus by reference, will, as of the date of a particular distribution of securities under the prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by this prospectus and the supplement as required by the securities legislation of all of the provinces and territories of Canada.
86. The Prospectus certifications were false, as the Prospectus did not disclose that the D&O Defendants failed to exercise care and oversight to ensure that Trevali had, maintained or implemented effective policies and procedures to manage core, mission-critical risks relative to its business and operations concerning:
- a. Health and safety;
 - b. Corporate governance and risk management; and
 - c. Internal control systems and disclosure controls and procedures.

F. Corrective Disclosures

a) April 16, 2022

87. On Saturday, April 16, 2022, Trevali issued a news release titled “Trevali Reports Flooding Event at its Perkoa Mine.” In this news release, Trevali reported that its Perkoa Mine had experienced a flooding event, and that eight mine workers were missing underground and unaccounted for.
88. This disclosure partially revealed to the market that Trevali failed to maintain or implement effective policies and procedures with respect to its core, mission-critical risk management and compliance affairs, specifically in relation to its health and safety measures.
89. On Monday, April 18, 2022, the price of Trevali’s common shares on the Toronto Stock Exchange plummeted to close at \$1.36, compared to \$1.89 as of the close of trading on the preceding trading day, April 14, 2022, representing a 28% decline.

b) August 15, 2022

90. After the close of trading on August 15, 2022, Trevali issued a news release in regard to the results of the second quarter of fiscal year 2022 ("**Q2 2022**") announcing, among other things, that:
 - a. it had experienced production challenges and/or suspension of its operations at its major mining properties, the Perkoa mine and the Caribou mine;
 - b. its Q2 2022 revenue had declined 44% on a year-over-year basis
 - c. it was taking a non-cash, after-tax impairment of \$23.7 million against the Perkoa and Caribou operations and/or assets; and

- d. it would be unable to make a mandatory prepayment of approximately \$7.5 million on its revolving credit facility.
91. Trevali's August 15, 2022 disclosures, furthermore, reported that as a result of an investigation into the flooding event at Perkoa, Trevali would enhance its health, safety and security measures at Perkoa, and that it would review its measures and procedures at its further mines.
92. This disclosure revealed to the market that the D&O Defendants had failed in managing core, mission-critical risks to Trevali's enterprise both operationally and financially.
93. On August 16, 2022, the price of Trevali's common shares on the Toronto Stock Exchange plummeted to close at \$0.22, compared to \$0.46 as of the close of trading on August 15, 2022, representing a 52% decline.

G. Subsequent Events

94. On August 19, 2022, Trevali issued a news release titled "Trevali Receives Initial Order for CCAA Protection and Provides Operations Update," reporting that it had sought and secured protection from its creditors under the CCAA.
95. On August 22, 2022, Trevali issued a news release titled "Trevali Announces Trading Halt for Common Shares and Provides Corporate Update," reporting that the trading in its common shares had been halted on the Toronto Stock Exchange, and expected to be halted on the other securities exchanges in which it trades. Trevali furthermore reported that:
 - a. it expected that its common shares would be delisted from trading on the Toronto Stock Exchange and elsewhere;
 - b. the Defendants Cote and Popovic had resigned from the Board of Directors;
and

- c. a manager of Perkoa Mine and a contractor had been detained by authorities in Burkina Faso pending trial on charges relating to the flooding event in April 2022.
96. On August 29, 2022, Trevali filed a material change report in relation to the foregoing events.
97. On September 6, 2022, Trevali reported that following a delisting review by the Toronto Stock Exchange, its common shares would be delisted effective close of market on October 3, 2022.

H. The Plaintiffs' and the Class's Damages

98. At all material times, Trevali's common shares traded in an efficient market that incorporated the publicly available information about the company into the price of those securities.
99. The Defendants knew and intended that the market price of Trevali's common shares would reflect the information that they communicated to the market, including the misrepresentations alleged herein.
100. The Plaintiffs and the Class suffered damages and losses as a result of the Defendants' misrepresentations and improper conduct alleged herein, as they purchased or acquired Trevali's common shares at artificially inflated prices.

PART 3: RELIEF SOUGHT

1. On behalf of themselves and the other Class Members, the Plaintiffs seek:
- a. an Order of this Honourable Court appointing them as representatives for the Class pursuant to:
 - i. section 11 of the CCAA and/or Supreme Court Civil Rule 20-3(6); and/or

- ii. pursuant to section 2, 2(4) and/or 4.1 of the *Class Proceedings Act*, furthermore certifying this action as a class proceeding under the *Class Proceedings Act*;
- b. an order granting leave of the Court under section 140.8 of the *Securities Act* and, if necessary, the concordant provisions of the securities legislation of the other Canadian provinces and territories, to proceed with statutory liability claims against the Defendants;
- c. a declaration that the Impugned Documents contained a misrepresentation;
- d. a declaration that the Defendant Trevali is vicariously liable for the acts and omissions of the D&O Defendants, and of its other directors and officers;
- e. a declaration that the Defendants engaged in oppressive conduct, and that the Plaintiffs and the Class are entitled to relief, including monetary compensation and otherwise, pursuant to subsections 227(3)(c), (d), (f), (g), (h), (i), (j), (k), (m), (o), (p), (q) and/or (r) of the *Business Corporations Act*;
- f. damages to the Plaintiffs and the Class, to the extent possible on an aggregated basis pursuant to Part 4, Division 2 of the *CPA*, in the amount of \$56 million;
- g. an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- h. pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c.79, as amended, and the costs of notice and administration of judgment; and
- i. such further and other relief as this Honourable Court may deem just.

PART 4: LEGAL BASIS

A. Statutory claim for damages under section 131 of the Securities Act (Primary Market Prospectus Liability)

1. Pursuant to the Prospectus Supplement dated November 25, 2020, Trevali undertook a primary market offering of its securities whereby it issued and sold effectively 18,653,000 Units of its securities, at an effective price of \$1.85 per Unit (“Offering”).¹ Each Unit was comprised of one common share and one-half of one common share purchase warrant.
2. The Offering was closed on December 2, 2020, for gross proceeds of \$34.5 million.
3. The Offering was conducted pursuant to an underwriting agreement between Trevali and certain financial institutions acting as underwriters, dated November 25, 2020. The underwriting agreement is governed by and to be construed in accordance with the laws in force in the Province of British Columbia and the federal laws of Canada applicable therein.
4. The warrants that were issued and sold in the Offering were issued pursuant to a Warrant Indenture dated December 2, 2020, which provides as follows:

This Indenture, the Warrants, the Warrant Certificates (including all documents relating thereto, which by common accord have been and will be drafted in English) shall be construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein and shall be treated in all respects as British Columbia contracts. Each of the parties hereto, which shall include the Warrantholders, irrevocably attorns to the exclusive jurisdiction of the courts of the Province of British Columbia with

¹ Pursuant to the Prospectus, Trevali issued and sold 186,530,000 Units at a selling price of \$0.185. On December 3, 2021, Trevali completed a consolidation of its common shares, whereby it consolidated 10 pre-consolidation common shares to 1 post-consolidation common shares.

respect to all matters arising out of this Indenture and the transactions contemplated herein.

5. Pursuant to the terms of the Warrant Indenture, which is specifically mentioned and referred to in the Prospectus Supplement dated November 25, 2020, each Class Member who acquired Trevali's securities in the Offering has attorned to the exclusive jurisdiction of the court of British Columbia in relation to the matters arising out of the Offering, either in whole or in relation to the portion of the Offering that concerned the issuance, sale and distribution of the warrants.
6. On behalf the Class Members who purchased or acquired Trevali's securities pursuant to the Prospectus Supplement dated November 25, 2020, the Plaintiffs asserts a claim for damages under section 131 of the *Securities Act* and, if necessary, the equivalent provisions of the securities legislation of the other Provinces and Territories of Canada.
7. The Prospectus Supplement dated November 25, 2020 contained a misrepresentation, as pleaded herein.
8. This cause of action is being asserted against each of the Defendants, except the Defendant Hull.

B. Statutory claim for damages under section 140.3(1) of the Securities Act (Secondary Market Liability)

9. On behalf of themselves and the other Class Members who acquired Trevali's securities in the secondary market, the Plaintiffs assert a claim under section 140.3(1) of the *Securities Act* and, if necessary, the equivalent provisions of the securities legislation of the other Provinces and Territories of Canada.
10. Trevali's Impugned Documents contained a misrepresentation, as pleaded herein.
11. This claim is being asserted against each of the Defendants:

- a. Trevali is the responsible issuer;
 - b. the Defendants Grimbeek, Gardiner, Ball, Cote, Popovic, Hull, Isserow and Williams were directors of Trevali at the relevant time; and
 - c. the Defendant Creaney was, at the relevant time, an officer of Trevali. He signed the Prospectuses and authorized the release of the other Impugned Documents.
12. The Plaintiffs will seek leave of the Court to proceed with this statutory claim in accordance with section 140.8 of the *Securities Act* and, if necessary, the equivalent provisions of the securities legislation of the other Provinces and Territories of Canada.

C. The Oppression Remedy

13. On behalf of themselves and the other Class Members, the Plaintiffs assert a claim for oppression remedy under section 227 of the *Business Corporations Act*.
14. The Defendants engaged in oppressive conduct by failing to exercise care and oversight necessary to ensure that Trevali's policies and processes relative to its core, mission-critical risks and regulatory compliance were effective.
15. The Plaintiffs and the Class Members had a reasonable expectation that the D&O Defendants exercise care and supervision over Trevali's core, mission-critical business and affairs in accordance with a standard expected of a prudent person acting in comparable circumstances. The D&O Defendants violated those reasonable expectations.
16. The Plaintiffs plead the remedies prescribed in subsections 227(3)(c), (d), (f), (g), (h), (i), (j), (k), (m), (o), (p), (q) and/or (r) of the *Business Corporations Act*.

D. Vicarious Liability

17. In addition to its direct liability, Trevali is vicariously liable for the acts and omissions of the D&O Defendants, and of its other directors and officers.

E. Real and Substantial Connection with British Columbia

18. This proceeding and the claims of the Plaintiffs and each Class Member have a real and substantial connection with the Province of British Columbia. The claims of the Plaintiffs and the Class Members arise out of investment in securities of Trevali, which is incorporated under the laws of British Columbia, is headquartered in British Columbia, carries on business in British Columbia, and is regulated by the British Columbia Securities Commission.

19. If necessary, this Notice of Civil Claim may be served outside British Columbia without leave because this proceeding concerns a business carried on in British Columbia, a tort committed in British Columbia and contractual obligations which, to a substantial extent, were to be performed in British Columbia.

Plaintiffs' address for service:

Eli Karp / Sage Nematollahi
KND Complex Litigation
1186 Eglinton Ave West
Toronto, ON M6C 2E3
(416) 537-3529
ek@knd.law / sn@knd.law

Place of trial: Vancouver, British Columbia.

The address of the registry is: 800 Smithe Street, Vancouver, BC V6Z 2E1.

_____ 2022

KND Complex Litigation
1186 Eglinton Ave West
Toronto, ON M6C 2E3
(416) 537-3529

Eli Karp (he/him)

ek@knd.law

Sage Nematollahi (he/him)

sn@knd.law

Counsel to the Plaintiffs

Rule 7-1(1) of *the Supreme Court Civil Rules* states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial,
and

(b) serve the list on all parties of record.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. On behalf of itself and the other Class Members, the Plaintiff pleads and relies upon the *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c.28 (the "*CJPTA*") in respect of the Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to section 10 of the *CJPTA* because this proceeding:

(e) concerns contractual obligations, and

(i) the contractual obligations, to a substantial extent, were to be performed in British Columbia;

(g) concerns a tort committed in British Columbia; and

(h) concerns a business carried on in British Columbia.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This proposed securities class proceeding arises out of the Defendants' misrepresentation in the disclosure documents of Trevali Mining Corporation issued between October 9, 2020 and August 15, 2022, inclusive. The action alleges that the Defendants made a misrepresentation concerning Trevali's corporate governance practices. This proposed class proceeding seeks to recover compensation for the damages of the Plaintiffs and the other Class Members.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- the provision of goods or services or other general commercial matters
- investment losses
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law

- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4: ENACTMENTS RELIED ON:

1. *Class Proceedings Act*, RSBC 1996, c. 50, as amended
2. *Business Corporations Act*, SBC 2002, c 57, as amended
3. *Securities Act*, RSBC 1996, c 418, as amended
4. *Securities Act*, RSO 1990, c S 5, as amended
5. *Securities Act*, RSA 2000, c S-4, as amended
6. *Securities Act*, CQLR c V-1.1, as amended
7. *The Securities Act*, CCSM c S50, as amended
8. *Securities Act*, SNB 2004, c S-5.5, as amended
9. *Securities Act*, RSNL 1990, c S-13, as amended
10. *Securities Act*, SNWT 2008, c 10, as amended;
11. *Securities Act*, RSNS 1989, c 418, as amended
12. *Securities Act*, SNu 2008, c 12, as amended
13. *Securities Act*, RSPEI 1988, c S-3.1, as amended
14. *The Securities Act, 1988*, SS 1988-89, c S-42.2, as amended;
15. *Securities Act*, SY 2007, c 16, as amended
16. *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c.28, as amended
17. *Court Order Interest Act*, RSBC 1996, c.79, as amended