

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:22-cv-00453-PAB-KAS

MICHAEL BILINSKY, Individually and on Behalf of All Others
Similarly Situated,

Plaintiff,

v.

GATOS SILVER, INC.,
STEPHEN ORR,
ROGER JOHNSON,
PHILIP PYLE,
JANICE STAIRS,
ALI ERFAN,
IGOR GONZALES,
KARL HANNEMAN,
DAVID PEAT,
CHARLES HANSARD, and
DANIEL MUÑIZ QUINTANILLA,

Defendants.

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF:
(I) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE SETTLEMENT AND
APPROVAL OF THE PLAN OF ALLOCATION; AND
(II) LEAD COUNSEL AND WTO'S MOTION FOR AWARDS OF
ATTORNEYS' FEES, LITIGATION EXPENSES, AND
REASONABLE COSTS AND EXPENSES TO PLAINTIFFS**

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

I. NO SETTLEMENT CLASS MEMBER HAS OBJECTED 1

II. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT
AND APPROVE THE PLAN OF ALLOCATION..... 2

III. THE REQUESTED FEE AND EXPENSE AWARDS SHOULD BE
APPROVED 5

CONCLUSION..... 7

Plaintiffs, Lead Counsel, and WTO respectfully submit this combined reply in further support of (I) Plaintiffs' Motion for Final Approval of the Settlement and Approval of the Plan of Allocation (ECF No. 89); and (II) Lead Counsel and WTO's Motion for Awards of Attorneys' Fees, Litigation Expenses, and Reasonable Costs and Expenses to Plaintiffs (ECF No. 90).¹

PRELIMINARY STATEMENT

On April 26, 2024, Plaintiffs, Lead Counsel, and WTO filed memoranda of law and declarations detailing Plaintiffs' Counsel's extensive effort that culminated in the proposed \$21 million Settlement and the grounds for the requested fees and expenses. (*See* ECF Nos. 89-1, 90-1, and 91.) No objections have been submitted. This uniformly positive response from the Settlement Class confirms that the Settlement is fair, reasonable, and adequate, and that the requested fee and expense awards are appropriate.

I. NO SETTLEMENT CLASS MEMBER HAS OBJECTED

No Settlement Class Member has objected to the proposed Settlement, the Plan of Allocation, or the requested fee and expense awards.

The Settlement Class was apprised of the proposed Settlement through a robust notice program that has included the individual transmission of 29,900 Notices, wide-reaching publication of the Summary Notice, online advertisement of the Settlement, a Settlement Website, and a dedicated telephone line. (*See* ECF 91-4 (Kimball Decl.) ¶¶11-23; Ex. A (Supp. Kimball Decl.) ¶¶5-9, submitted herewith.) In response, numerous Settlement Class Members have submitted claims or inquired about the Settlement, with 320 claims filed, 5,755 unique visitors to

¹ Capitalized terms not defined herein have the meanings stated in the opening briefs and Joint Declaration filed on April 26, 2024 (ECF Nos. 89-1, 90-1, and 91). Citations are omitted unless otherwise stated.

the Settlement Website, and 99 calls to the Claims Administrator as of May 24, 2024. (Ex. A (Supp. Kimball Decl.) ¶¶7-10.)

The deadlines for exclusion requests (May 5) and objections (May 10) have now passed and no Settlement Class Member has sought exclusion or objected to the Settlement, the requested awards of fees and expenses, or any other matter. (*Id.* ¶¶12-14.)

The absence of objections strongly supports final approval. “[I]n litigation involving a large class, such as that here, it [is] extremely unusual not to encounter objections.” *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 478 (S.D.N.Y. 1998). Indeed, even where several class members object, “it counsels in favor of the settlement’s fairness and reasonableness.” *Chipotle Mexican Grill, Inc. v. Ells*, No. 16-CV-2011-WJM-KLM, 2018 WL 1621166, at *8 (D. Colo. Apr. 4, 2018); *see also Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, 807 F. App’x 752, 762 (10th Cir. 2020) (affirming final approval where, “of 607 class members, only the four Objectors in this case challenged the reasonableness” of settlement); *In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 691-92 (D. Colo. 2014) (reaction of class supported final approval where only two parties objected); *Ryskamp v. Looney*, No. 10-CV-00842-WJM-KLM, 2012 WL 3397362, at *4 (D. Colo. Aug. 14, 2012) (same).

II. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT AND APPROVE THE PLAN OF ALLOCATION

Plaintiffs’ April 26 opening papers demonstrate that the proposed Settlement is fair, reasonable, and adequate under Rule 23(e)(2) and *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002), and that the Plan of Allocation should likewise be approved as fair, reasonable, and adequate. (*See* ECF No. 89-1 at 7-19 of 20.)

In particular, the proposed Settlement was achieved after Plaintiffs' Counsel conducted a meticulous investigation, with the assistance of consulting experts on mining and forensic accounting; filed a detailed Amended Complaint and a robust opposition to Defendants' motion to dismiss; and participated in a mediation under the auspices of Robert A. Meyer, culminating in Mr. Meyer's recommendation, after the parties were unable to reach agreement, that this action settle for \$21 million. (*See* ECF 91 ¶¶10-24.)

“The reaction of the class to the proffered settlement is perhaps the most significant factor to be weighed in considering its adequacy.” *Ryskamp*, 2012 WL 3397362 at *4.

Here, the absence of objections and exclusion requests—with over 29,000 Notices disseminated—confirms that the \$21 million Settlement is an excellent result. “The fact that no class member objects shows that the class also considers this settlement fair and reasonable.” *Diaz v. Lost Dog Pizza, LLC*, No. 17-CV-2228-WJM-NYW, 2019 WL 2189485, at *3 (D. Colo. May 21, 2019); *see also In re DaVita Healthcare Partners, Inc.*, No. 12-CV-2074-WJM-CBS, 2015 WL 3582265, at *3 (D. Colo. June 5, 2015) (“utter absence of objections” and “nominal number of shareholders who have exercised their right to opt out . . . militate strongly in favor of approval of the settlement”); *Voulgaris v. Array Biopharma Inc.*, No. 17-cv-02789-KLM, 2021 WL 6331178, at *9 (D. Colo. Dec. 3, 2021) (“[T]he fact that just one objection was received in response to more than 46,000 notices to potential Class members suggests that the settlement was widely received as a favorable and positive outcome for the case.”).

The Settlement Class's reaction also supports approval of the Plan of Allocation, which provides an appropriate mechanism for the fair and equitable distribution of the Net Settlement

Fund. *See* ECF No. 89-1 at 17-19 of 20; *Crocs*, 306 F.R.D. at 692 (“the favorable reaction of the Class supports approval of the proposed Plan of Allocation”).

One individual, William Natbony, contacted Lead Counsel to request that he appear remotely at the Fairness Hearing on May 31. If the Court wishes to permit telephonic participation, Lead Counsel is willing to provide a dial-in number to facilitate Mr. Natbony’s participation.

In all events, Mr. Natbony confirmed that he is not objecting to the proposed Settlement.² Mr. Natbony also had questions about the \$21 million Settlement amount, which Lead Counsel addressed by speaking to him and following up by email, attached as Exhibit B.

As summarized in Exhibit B and Plaintiffs’ prior submissions, the \$21 million Settlement is an excellent result: it represents 9.4% to 63% of estimated damages, which are a range of approximately \$33.2 million to \$224.5 million as a result of several complex risks and variables. (ECF 91 ¶¶38-41.) Notably, the 63% figure represents more than half of estimated damages, while the low end of 9.4% is nearly double the 4.8% median recovery in Exchange Act class actions. (*Id.* ¶41.) This Court and others have approved securities class settlements that recovered comparable or lower percentages. *See Crocs*, 306 F.R.D. at 691 & n.20 (overruling objection to settlement that recovered 1.3% of estimated damages); *Voulgaris v. Array Biopharma, Inc.*, 60 F.4th 1259, 1264 (10th Cir. 2023) (recovery exceeded “median settlement as a percentage of overall damages [of] 7.6% for similar cases” in the “Tenth Circuit between 2010 and 2019”).

² For the avoidance of doubt, Mr. Natbony did not comply with the May 10 deadline and other requirements to object (described in the Court-approved Long-Form Notice, ECF No. 85-2 at 19-21), such as objecting in writing and providing documentation of membership in the Settlement Class. As a result, any objection is “waived” and “forever foreclosed.” *Id.* at 21; *cf. Crocs*, 306 F.R.D. at 682-83 (objection “deemed waived” where objector failed to provide proof of securities transactions during class period).

Moreover, the Settlement is a highly favorable result in light of the risk of recovering less or nothing, the inherent delay of further litigation, and Gatos’s financial condition. For example, at the time of the Settlement, Gatos reported a cash balance of \$10.5 million and \$9 million in outstanding debt (with a 70% interest in a joint venture with additional cash). (See ECF Nos. 89-1 at 13-14 of 20; ECF 91 ¶¶39-42.)³

The Company’s cash contribution to the proposed Settlement—which Gatos publicly reported as \$1.4 million (Ex. B)—further supports final approval. See *Peace Officers’ Annuity & Benefit Fund of Georgia v. DaVita Inc.*, No. 17-CV-0304-WJM-NRN, 2021 WL 1387110, at *4 (D. Colo. Apr. 13, 2021) (“company’s contribution ‘of its own cash to the Settlement’ ‘strongly demonstrate[d] the adequacy of the Settlement amount’”) (quoting *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 842 (E.D. Va. 2016)).

In short, the proposed Settlement provides valuable, immediate recovery for the Settlement Class that was negotiated at arm’s length and outweighs the possibility of future relief. No objections have been submitted, and final approval is warranted.

III. THE REQUESTED FEE AND EXPENSE AWARDS SHOULD BE APPROVED

On April 26, 2024, Lead Counsel and WTO submitted an extensive record supporting the requested 28% fee, which was also posted to the Settlement Website. (Ex. A (Supp. Kimball

³ Mr. Natbony noted that Gatos’s share price peaked near \$20 and declined to the single digits, but potentially recoverable damages are not simply the difference between Gatos’s highest and lowest share price. Instead, damages must be proven based on the amount of decline attributed to the alleged misstatements. See *Array Biopharma*, 2021 WL 6331178 at *8 (challenge to damages calculation “confuse[d] market capitalization loss with investor damages while only the latter [is] recoverable under the federal securities laws”). In addition, while Mr. Natbony noted that Gatos’s share price has improved since the parties agreed to the Settlement last year, that increase—much of which occurred in the last three months—does not increase the amount of damages in this case or directly increase Gatos’s ability to fund a settlement. (See Ex. B.)

Decl.) ¶7.) As the Joint Declaration describes in detail, Plaintiffs' Counsel devoted over 2,200 hours of skilled effort, and surmounted numerous risks, to achieve the \$21 million Settlement. (See ECF No. 91 ¶¶10-26; 60-87.)

As indicated above, no Settlement Class Members have objected to the requested fees and expenses or the awards to Plaintiffs. "[T]he fact that none of the class members objected to the requested attorneys' fees is significant and weighs in favor of the requested award." *In re Crocs, Inc. Sec. Litig.*, No. 07-CV-02351-PAB-KLM, 2014 WL 4670886, at *5 (D. Colo. Sept. 18, 2014).

Moreover, the requested fee percentage is below the typical award in the Tenth Circuit of 33%, *id.* at *3, and similar and higher fee percentages have regularly been awarded in securities class settlements in this Circuit. (ECF No. 90-1 at 9 of 20.) And while the Court is "not required to perform a lodestar cross-check," *Array Biopharma*, 60 F.4th at 1265, the 3.17 multiplier here is reasonable. *See, e.g., In re Qwest Comms. Int'l, Inc. Sec. Litig.*, No. 01-cv-01451-REB-CBS, 2006 WL 8429707, at *4 (D. Colo. Sept. 29, 2006) (appropriate fee awards may "reach as high as five to ten times the lodestar figure"). Plaintiffs' Counsel's hourly rates are also reasonable and align with the rates of "counsel litigating a complex securities class action on a contingent basis." *Array Biopharma*, 60 F.4th at 1266; *see also* ECF 90-1 at 17 of 20.

Based on the supporting record and the Settlement Class's reaction, Lead Counsel and WTO respectfully submit that the requested attorneys' fees, expenses, and awards to Plaintiffs are reasonable and should be granted.

CONCLUSION

Plaintiffs, Lead Counsel, and WTO respectfully request that the Court (1) grant final approval of the Settlement and approval of the Plan of Allocation, and (2) grant the attorneys' fees, litigation expenses, and awards to Plaintiffs requested in ECF No. 90.

Dated: May 24, 2024

s/ Kathryn A. Reilly

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MICHAEL BILINSKY, Individually and on Behalf of All Others
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Defendants.

**DECLARATION OF JOSEPH A. FONTI IN FURTHER SUPPORT OF:
(I) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE SETTLEMENT AND
APPROVAL OF THE PLAN OF ALLOCATION; AND
(II) LEAD COUNSEL AND WTO'S MOTION FOR AWARDS OF
ATTORNEYS' FEES, LITIGATION EXPENSES, AND
REASONABLE COSTS AND EXPENSES TO PLAINTIFFS**

JOSEPH A. FONTI declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true:

1. I am a partner at Bleichmar Fonti & Auld LLP (“BFA” or “Lead Counsel”), the Court-appointed Lead Counsel and Class Counsel in the above-captioned Action (the “Action”).¹

2. I submit this Declaration in further support of (I) Plaintiffs’ Motion for Final Approval of the Settlement and Approval of the Plan of Allocation (ECF No. 89); and (II) Lead Counsel and WTO’s Motion for Awards of Attorneys’ Fees, Litigation Expenses, and Reasonable Costs and Expenses to Plaintiffs (ECF No. 90).

3. Attached hereto as Exhibit A is the Supplemental Declaration of Morgan Kimball Regarding (I) Mailing of Notice; (II) the Settlement Website and Contact Center Services; (III) Claim Filing; and (IV) Requests for Exclusion and Objections Received to Date, dated May 24, 2024 (the “Supplemental Kimball Declaration” or “Supp. Kimball Decl.”).

4. Attached hereto as Exhibit B is a true and correct copy of an email I sent on May 21, 2024 at 4:51 p.m. ET to William Natbony.

Dated: May 24, 2024

s/ Joseph A. Fonti

Joseph A. Fonti

¹ Capitalized terms not defined herein have the meanings stated in the opening briefs and Joint Declaration filed on April 26, 2024 (ECF Nos. 89-1, 90-1, and 91).

EXHIBIT A

**Supplemental Declaration of Morgan Kimball Regarding
(I) Mailing of Notice; (II) the Settlement Website and Contact
Center Services; (III) Claim Filing; and (IV) Requests for Exclusion
and Objections Received to Date,
dated May 24, 2024**

UNITED STATES DISTRICT COURT
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Civil Action No. 1:22-cv-00453-PAB-KAS

MICHAEL BILINSKY, Individually and on Behalf of All Others
Similarly Situated,

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v.

GATOS SILVER, INC.,
STEPHEN ORR,
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KARL HANNEMAN,
DAVID PEAT,
CHARLES HANSARD, and
DANIEL MUÑIZ QUINTANILLA,

Defendants.

**SUPPLEMENTAL DECLARATION OF MORGAN KIMBALL REGARDING
(I) MAILING OF NOTICE; (II) THE SETTLEMENT WEBSITE AND CONTACT
CENTER SERVICES; (III) CLAIM FILING; AND (IV) REQUESTS FOR EXCLUSION
AND OBJECTIONS RECEIVED TO DATE**

MORGAN KIMBALL declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true:

1. I am a Project Manager for Epiq Class Action and Claims Solutions, Inc. (“Epiq”). I am providing this declaration at the request of Lead Counsel Bleichmar Fonti & Auld LLP (“Lead Counsel”), on behalf of Plaintiffs, in connection with Plaintiffs’ Motion for Final Approval of the Settlement and Approval of the Plan of Allocation.¹ This declaration supplements my prior declarations (ECF No. 82-9; ECF No. 91-4). I make this declaration based on personal knowledge, and if called to testify, I could and would do so competently.

2. Pursuant to the Court’s February 29, 2024 Preliminary Approval Order (ECF No. 87), Epiq is authorized to act as the Claims Administrator in connection with the Settlement of the above-captioned action (the “Action”). This declaration provides information regarding: (i) the mailing of the Notice; (ii) the Settlement Website and contact center services; (iii) the current status of claim filings; and, (iv) the requests for exclusion and objections received by Epiq to date.

I. MAILING OF THE NOTICE

3. As previously stated, as of April 26, 2024, a total of 29,155 Notices had been disseminated to potential Settlement Class Members, including Notices sent directly to nominees at their request for transmission to investors. (*See* ECF 91-4 ¶¶8, 11.)

¹ Capitalized terms not defined herein have the meanings stated in the Amended Class Action Complaint for Violations of the Securities Laws (ECF No. 54), the Stipulation and Agreement of Settlement dated September 12, 2023 (ECF No. 85-1), and the Joint Declaration of Joseph A. Fonti and Kathryn A. Reilly in Support of: (I) Plaintiffs’ Motion for Final Approval of the Settlement and Approval of the Plan of Allocation and (II) Lead Counsel and WTO’s Motion for Awards of Attorneys’ Fees, Litigation Expenses, and Reasonable Costs and Expenses to Plaintiffs (ECF No. 91).

4. The majority of these notices were either emailed directly by one nominee, Broadridge, or were mailed as a result of brokers and nominees providing names and addresses of potential Settlement Class Members (or in response to brokers' and nominees' requests for Notices to forward to their customers). (*Id.* ¶¶8-10.) At Lead Counsel's direction, Epiq has taken additional steps to follow up with brokers and nominees who had not responded to the Notice, including by phone and/or email. (*Id.* ¶7.)

5. Since April 26, 2024, Epiq has continued to receive further information and requests from nominees and intermediaries and has promptly responded to these requests. Epiq disseminated 737 additional copies of the Notice between April 27 and May 3, 2024, and eight (8) additional copies between May 4 and May 24, 2024. Thus, as of May 24, 2024, a total of 29,900 copies of the Notice have been disseminated to potential Settlement Class Members, including copies emailed directly by nominees to potential Settlement Class Members.

6. A total of 329 Notices have been returned to Epiq by the U.S. Postal Service. Of those 329 returned Notices, Epiq obtained 13 new addresses from the U.S. Postal Service and 13 were successfully remailed. A total of 316 Notices have been deemed undeliverable, meaning either valid replacement addresses were not provided by the U.S. Postal Service or identified by Epiq through its address research services, or if updated addresses were obtained, those updated addresses were ultimately not valid and the Notices were returned again as undeliverable. This represents approximately 2.87% of the total number of Notices mailed, which is below the typical 5% undeliverable rate Epiq typically observes in notice programs like this one.

II. THE SETTLEMENT WEBSITE AND CONTACT CENTER SERVICES

7. As of May 24, 2024, there have been 10,680 pageviews of the Settlement Website, 5,755 unique visitors, and 258 downloads of the Proof of Claim form. Plaintiffs' and Plaintiffs' Counsel's filings on April 26, 2024 (ECF Nos. 89, 90, and 91) were loaded to the Settlement Website on April 30, 2024.

8. As of May 24, 2024, Epiq has received a total of 99 calls to the telephone number dedicated to the Settlement, including 67 calls that were handled by a live operator. Epiq promptly responded to each telephone inquiry and mailing request received by telephone, including messages left by callers, and will continue to do so.

9. As of May 24, 2024, Epiq has received 102 emails and mailed correspondence from potential Settlement Class Members, and has responded as appropriate.

III. CLAIM FILING

10. As of May 24, 2024, Epiq has received 320 Proof of Claim forms from potential Settlement Class Members and brokerage firms, banks, institutions, and other nominees. The total number of Proof of Claim forms will continue to be refined as Epiq receives and processes claim forms.

11. As is typical in claims administration matters of this kind, Epiq will continue to process claims received or postmarked after June 19, 2024, until such time as the receipt and processing of new claims will impact decisions on disbursements. Class Counsel will present all valid late-filed claims to the Court at the time the distribution motion is made and intends to recommend that such valid claims be paid.

IV. REQUESTS FOR EXCLUSION AND OBJECTIONS

12. Potential Settlement Class Members who wished to seek exclusion were required to electronically submit or postmark requests for exclusion on or before May 5, 2024, and any objections were required to be received or filed (not simply postmarked) on or before May 10, 2024.

13. As of May 24, 2024, Epiq has not received any requests for exclusion.

14. As of May 24, 2024, Epiq has not received any objections to the Settlement, the proposed Plan of Allocation, or the application for attorneys' fees and expenses, including requests for awards to Plaintiffs pursuant to 15 U.S.C. § 78u-4(a)(4).

15. Epiq has monitored (and will continue to monitor) the Settlement Website and all mail delivered to the Settlement-specific P.O. Box for potential requests for exclusion and objections received after May 24, 2024, so that Class Counsel can address them at or before the Fairness Hearing on May 31, 2024.

Dated: May 24, 2024


By: 
Morgan Kimball

EXHIBIT B

**Email from Joseph A. Fonti to William Natbony,
dated May 21, 2024 at 4:51 p.m. ET**

From: Joseph Fonti
Sent: Tuesday, May 21, 2024 4:51 PM
To: Bill Natbony
Cc: Evan Kubota
Subject: Gatos Securities Litigation

Mr. Natbony:

Thank you for speaking with us today. As we discussed, we understand that you wish you to appear remotely at the Fairness Hearing on May 31. We discussed the following points:

1. The Fairness Hearing is in person in Denver. However, we will advise the Court on Friday of your interest in appearing in the event that the Court wishes to permit telephonic participation. We will also provide this correspondence to the Court and send you a copy of our submission.
2. During our call, you confirmed that you have not objected to the Settlement. As we explained, the deadline for objections was May 10. (Objections must also be stated in writing and meet several other requirements stated in the Court-approved notice, including providing documentation of membership in the Settlement Class. See <https://www.gatossecuritieslitigation.com/Content/Documents/Notice.pdf>.)
3. We discussed your questions about the \$21 million Settlement amount. We believe the Settlement represents an excellent result under any measure. As our Court filings explain, \$21 million represents 9.4% to 63% of estimated damages, which are a range of approximately \$33.2 million to \$224.5 million. The wide range of damages is due to the complex facts of the case, and the possibility of Gatos prevailing on some or many pieces of the factual and legal elements. Of course, Gatos could have prevailed entirely, resulting in \$0 recovery.
 - a. The range of recoveries meets or exceeds typical percentages in securities class litigation. For example, the 9.4% figure is nearly double the 4.8% median recovery in Exchange Act class actions around the country.
 - b. The \$21 million Settlement should also be evaluated in the context of the risk and delay of further litigation, and Gatos's financial condition. Absent a settlement, there was no assurance that Plaintiffs would prevail at all, much less obtain a judgment for over \$200 million. In addition, such a judgment would significantly exceed Gatos's ability to pay, even today.
 - c. As to Gatos's financial condition, at the time of settlement, Gatos reported that it had a cash balance of \$10.5 million and \$9 million outstanding debt of as of May 31, 2023; while the LGJV had additional cash, Gatos only has a 70% interest and cannot access the LGJV's cash absent authorized distributions.
 - d. We also note that the Settlement amount is the product of a recommendation from Robert Meyer, a respected mediator. After the parties were not able to reach agreement after a mediation, Mr. Meyer recommended that the case settle for \$21 million.
4. You noted that Gatos's share price peaked near \$20 and declined to the single digits. As we explained, potentially recoverable damages are not defined by the difference between Gatos's highest and lowest share price, but must be proven to be the amount of decline attributed to the alleged misstatement. As a general matter, damages are limited by the price movement after the corrective disclosure in January 2022. You also noted that Gatos's share price has improved since the parties agreed to the Settlement last year. However, that increase—much of which occurred in the last three months—does not increase the amount of potentially recoverable damages or directly increase Gatos's ability to fund a settlement.

5. You also asked about the amount of Gatos's D&O insurance. As we explained, the specific amount of insurance is confidential. However, based on public information, we can confirm that both Gatos and its insurers contributed to the \$21 million settlement. Gatos's latest Form 10-Q, filed on May 6, 2024, states: "The District Court issued its Preliminary Order on February 29, 2024, approving the proposed settlement. Consistent with the stipulation of settlement requiring that a settlement account be funded within 30 days of the Preliminary Order, the Company and its insurers have fully funded that account, with \$1,403 [\$1.403 million] funded by the Company and \$19,597 [\$19.597 million] funded by the Company's insurers."
6. Finally, you asked whether Gatos's management had engaged in insider sales. Gatos's CEO (Stephen Orr) and CFO (Roger Johnson) did not make insider sales. Additionally, Defendants argued that Orr actually purchased additional shares, and that the fact that these Defendants did not sell any of their 218,000 shares of stock (or over 1 million vested options) undercuts any suggestion of their fraudulent intent. The only defendant who made insider sales is Gatos's Chief Geologist Philip Pyle, who sold shares for \$1.95 million (with \$1.18 million in estimated realized profits). Gatos's Vice President, Mexico (Luis Felipe Huerta) also sold shares for \$1.4 million (with about \$739,000 in estimated realized profits), although he is not a defendant.

We trust the foregoing addresses your questions. Please let me know if we can provide any additional information at this time.

Regards,
Joe

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