Court File No.: 1965/16CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

SUZAN POIRIER

Plaintiff

- and -

SILVER WHEATON CORP., RANDY SMALLWOOD and GARY D. BROWN

Defendants

Proceeding under the *Class Proceedings Act, 1992*
STATEMENT OF CLAIM
(Notice of Action issued August 10, 2016 & amended September 2, 2016)

I. DEFINITIONS

1. In this document, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

(a) **AIF** means Annual Information Form;

(b) **CEO** means Chief Executive Officer;

(c) **CFO** means Chief Financial Officer;

(d) **Class** and **Class Members** are comprised of all of the following, other than **Excluded Persons**:

(i) **Primary Market Class**: All persons and entities, wherever they may reside or may be domiciled, who acquired **Silver Wheaton**'s **Securities** in the **Offering**; and

(ii) **Secondary Market Class**: All persons and entities who, during the **Class Period**, acquired **Silver Wheaton**'s **Securities** in the secondary market, and

(1) are resident or domiciled in Canada or were resident or domiciled in Canada at the time of such acquisitions, regardless

of the location of the exchange on which they acquired their **Silver Wheaton Securities**; or

(2) wherever they reside or are domiciled, acquired **Silver Wheaton**'s **Securities** in the secondary market in Canada or elsewhere, other than in the United States;

(e) **Class Period** means the period from August 14, 2013 to July 6, 2015, inclusive;

(f) **Controlled Transaction** means a transaction occurring between non-arm's length parties;

(g) **CPA** means the *Class Proceedings Act, 1992*, SO 1992, c 6;

(h) **CRA** means Canada Revenue Agency;

(i) **Defendants** means **Silver Wheaton** and the **Individual Defendants**;

(j) **EDGAR** means the Electronic Data Gathering, Analysis, and Retrieval System;

(k) **Excluded Persons** means **Silver Wheaton** and its subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, the **Individual Defendants** and any member of their families and any entity in which any of them has or had during the **Class Period** any legal or de facto controlling interest;

(l) **IFRS** means International Financial Reporting Standards;

(m) **Impugned Documents** means **Silver Wheaton**'s:

(i) **MD&A** of Results of Operations and Financial Condition for the Three and Six Months Ended June 30, 2013 (filed on **SEDAR** August 14, 2013),

(ii) Condensed Interim Consolidated Financial Statements for the Three and Six Months Ended June 30, 2013 (filed on **SEDAR** August 14, 2013),

(iii) **MD&A** of Results of Operations and Financial Condition for the Three and Nine Months Ended September 30, 2013 (filed on **SEDAR** November 11, 2013),

(iv) Condensed Interim Consolidated Financial Statements for the Three and Nine Months Ended September 30, 2013 (filed on **SEDAR** November 11, 2013),

(v) 2013 Annual **MD&A** (filed on **SEDAR** March 20, 2014),

(vi) 2013 Audited Annual Financial Statements (filed on **SEDAR** March 20, 2014),

(vii) 2013 Annual Information Form (filed on **SEDAR** March 31, 2014),

(viii) 2013 Annual Report (filed on **SEDAR** April 9, 2014),

(ix) **MD&A** of Results of Operations and Financial Condition for the Three Months Ended March 31, 2014 (filed on **SEDAR** May 8, 2014),

(x) Condensed Interim Consolidated Financial Statements for the Three Months Ended March 31, 2014 (filed on **SEDAR** May 8, 2014),

(xi) **MD&A** of Results of Operations and Financial Condition for the Three and Six Months Ended June 30, 2014 (filed on **SEDAR** August 13, 2014),

(xii) Condensed Interim Consolidated Financial Statements for the Three and Six Months Ended June 30, 2014 (filed on **SEDAR** August 13, 2014),

(xiii) **MD&A** of Results of Operations and Financial Condition for the Three and Nine Months Ended September 30, 2014 (filed on **SEDAR** November 12, 2014),

(xiv) Condensed Interim Consolidated Financial Statements for the Three and Nine Months Ended September 30, 2014 (filed on **SEDAR** November 12, 2014),

(xv) Preliminary Short Form Prospectus (filed on **SEDAR** March 2, 2015),

(xvi) Amended Preliminary Short Form Prospectus (filed on **SEDAR** March 3, 2015),

(xvii) Final Short Form Prospectus (filed on **SEDAR** March 9, 2015),

(xviii) 2014 Annual **MD&A** (filed on **SEDAR** March 18, 2015),

(xix) 2014 Audited Annual Financial Statements (filed on **SEDAR** March 18, 2015),

(xx) 2014 Annual Information Form (filed on **SEDAR** March 31, 2015),

(xxi) 2014 Annual Report (filed on **SEDAR** April 10, 2015),

(xxii) Preliminary Short Form Prospectus (filed on **SEDAR** April 27, 2015),

(xxiii) Final Short Form Prospectus (filed on **SEDAR** May 4, 2015),

(xxiv) **MD&A** of Results of Operations and Financial Condition for the Three Months Ended March 31, 2015 (filed on **SEDAR** May 7, 2015), and

(xxv) Condensed Interim Consolidated Financial Statements for the Three Months Ended March 31, 2015 (filed on **SEDAR** May 7, 2015);

(n) **Income Tax Act** means the *Income Tax Act*, RSC 1985, c 1 (5th Supp);

(o) **Individual Defendants** means Randy Smallwood and Gary D. Brown;

(p) **MD&A** means Management's Discussion and Analysis;

(q) **NYSE** means the New York Stock Exchange;

(r) **OECD** means Organization for Economic Cooperation and Development;

(s) **Offering** means the offering of **Silver Wheaton**'s **Securities** during the Class Period by way of the Prospectus filed on SEDAR March 9, 2015;

(t) **OSA** means the *Securities Act*, RSO 1990, c S.5, as amended;

(u) **Plaintiff** means Suzan Poirier;

(v) **Securities** means **Shares** and any other "security" of Silver Wheaton as defined in the **OSA**;

(w) **Securities Legislation** means, collectively, the **OSA**, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, *1988*, SS 1988- 89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended; and the *Quebec Securities Act*, CQLR C V-1.1, as amended;

(x) **SEDAR** means the System for Electronic Document Analysis and Retrieval of the Canadian Securities Administrators;

(y) **Shares** means **Silver Wheaton**'s common shares;

(z) **Silver Wheaton** means the defendant Silver Wheaton Corp. and, as the context may require, includes its subsidiaries and affiliates;

(aa) **TSX** means the Toronto Stock Exchange; and

(bb) **Uncontrolled Transaction** means a transaction occurring between arm's length parties.

II. CLAIM

2. The Plaintiff claims:

(a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff for the Class Members;

(b) an order granting leave to proceed with an action under Part XXIII.1 of the OSA, or, if necessary, the corresponding provisions of the Securities Legislation;

(c) a declaration that the Impugned Documents contained one or more misrepresentations within the meaning of the OSA, the other Securities Legislation, and the common law;

(d) a declaration that the Individual Defendants authorized, permitted or acquiesced in the making of the misrepresentations while knowing them to be misrepresentations;

(e) a declaration that the Defendants owed the Plaintiff and Class Members a duty of care in the preparation and dissemination of the Impugned Documents and that they breached that duty of care;

(f) A declaration that the Defendants are liable in damages to the Class Members

(i) for negligence *simpliciter* with respect to the Offering;

(ii) pursuant to section 130 of the OSA and, if necessary, the corresponding provisions of the Securities Legislation with respect to the Offering;

(iii) for negligent misrepresentation; and

(iv) pursuant to section 138.3 of the OSA and, if necessary, the corresponding provisions of the other Securities Legislation.

(g) damages for negligent misrepresentation, negligence, pursuant to section 130 of the OSA and, if necessary, the corresponding provisions of the other Securities Legislation and, if leave is granted, pursuant to section 138.3 of the OSA and, if necessary, the corresponding provisions of the other Securities Legislation in the amount of up to $11.87 per Share, or such other amount proven at the common issues trial or any individual issues trial, and such amount per other Silver Wheaton security as may be calculated by the Court at a common issues trial or any individual issues trial;

(h) punitive damages in the amount of $10,000,000;

(i) a declaration that Silver Wheaton is vicariously liable for the acts and omissions of its officers, directors, employees, and subsidiaries;

(j) an order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;

(k) prejudgment and post judgment interest;

(l) costs of this action on a full indemnity basis, or in an amount that provides substantial indemnity plus, pursuant to s 26(9) of the CPA, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and

(m) such further and other relief as this Honourable Court may deem just.

III. OVERVIEW

3. Silver Wheaton is a precious metals "streaming company". Silver Wheaton is a reporting issuer in Ontario and all other provinces in Canada. During the Class Period, Silver Wheaton's Shares traded predominantly on the TSX and the NYSE under the ticker symbol "SLW". Silver Wheaton has various securities, including Shares, that are traded in Canada and elsewhere.

4. Throughout its 2005 to 2010 fiscal years (the "**Audit Period**"), Silver Wheaton's principal product was silver that it had agreed to purchase pursuant to silver purchase agreements. During this period, Silver Wheaton, or its wholly owned subsidiary in the Cayman Islands, Silver Wheaton (Caymans) Ltd. ("**SW Cayman**"), entered into "streaming agreements" with third party mining companies or affiliates pursuant to which Silver Wheaton or SW Cayman made upfront and other payments in consideration for the purchase of precious metals.

5. During the Audit Period, Silver Wheaton's reported income was generated primarily by the activities of its wholly owned subsidiaries, including SW Cayman. SW Cayman did not pay any income taxes on its profits in the Cayman Islands, nor did Silver Wheaton pay taxes in Canada on the income of SW Cayman. Silver Wheaton touted the fact that its profits were subject to minimal income tax in its public disclosures.

6. Prior to the beginning of the Class Period, the CRA had commenced an audit of Silver Wheaton's operations for the Audit Period ("**CRA Audit**"). Among other things, the CRA Audit concerned the operations of SW Cayman and its relationship with its parent company, Silver Wheaton.

7. On July 6, 2015, after market close, Silver Wheaton announced by way of press release that it had received a proposal letter from the CRA dated July 6, 2015, (the "**CRA Proposal**") in which the CRA proposed to reassess Silver Wheaton's income taxes for the 2005 to 2010 taxation years by approximately Cdn$715 million. Silver Wheaton estimated that federal and provincial taxes of approximately US$150 million would be assessed pursuant to the Proposal. The press release also disclosed that the CRA was seeking to apply transfer pricing penalties of approximately Cdn$72 million for the Audit Period.

8. The Proposal outlined the CRA's position that the transfer pricing provisions of the Income Tax Act, relating to income earned by Silver Wheaton's foreign subsidiaries, including SW Cayman, should apply such that Silver Wheaton be subject to tax on income earned by those foreign subsidiaries.

9. Following this disclosure, the price of Silver Wheaton's shares on the TSX declined from a closing price of $22.21 on July 6, 2015 to a closing price of $19.62 on July 7, 2015.

10. Throughout the Class Period, the Defendants made misrepresentations and omitted to state material facts required to be stated in order to make other statements not misleading in light of the circumstances in which they were made, regarding the business and operations of SW Cayman and the relationship between SW Cayman, Silver Wheaton,

and their respective employees and representatives, and the impact of such factors on Silver Wheaton's tax obligations and the potential outcome of the CRA Audit. As particularized below, each of the Impugned Documents contained misrepresentations or omissions relating to one or more of the following:

(a) management's belief that the CRA Audit was not expected to have a material adverse effect on Silver Wheaton; and

(b) the compliance of Silver Wheaton's financial statements with IFRS.

11. As a result of the Defendants' misrepresentations, the public price or value of Silver Wheaton's securities was artificially inflated during the Class Period, causing Class Members to acquire the securities at artificially inflated prices.

12. As the Defendants' misrepresentations were publicly corrected, the price or value of Silver Wheaton's securities declined, causing damages to the Class Members. The Plaintiff, on behalf of the other Class Members, seeks to recover those losses from the Defendants.

IV. PARTIES

A. *The Plaintiff*

13. The Plaintiff, Suzan Poirier, is an individual residing in Ontario. She acquired 500 shares of Silver Wheaton on the TSX during the Class Period, and continues to hold those shares.

B. *The Defendants*

14. The defendant Silver Wheaton is a corporation continued under the *Business Corporations Act* (Ontario), with its registered office in Toronto, Ontario. It is a

responsible issuer within the meaning of Part XXIII.1 of the OSA and the equivalent provisions of the other Securities Legislation.

15. As a reporting issuer in Ontario, Silver Wheaton was required throughout the Class Period to issue and file with SEDAR:

(a) within 45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with IFRS;

(b) within 90 days of the end of the fiscal year, annual financial statements prepared in accordance with IFRS;

(c) contemporaneously with each of the above, a MD&A of each of the above financial statements. MD&As are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. The MD&A must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future; and

(d) within 90 days of the end of the fiscal year, an AIF, including material information about the company and its business at a point in time in the context of its historical and possible future development. The AIF must describe the company, its operations and prospects, risks and other external factors that impact the company specifically.

16. Silver Wheaton controlled the contents of its MD&As, financial statements, AIFs, and the other documents particularized herein, and the misrepresentations made therein were made by Silver Wheaton and the Individual Defendants.

17. Randy Smallwood ("**Smallwood**") is an individual residing in British Columbia. At all times during the Class Period, Smallwood was the CEO and a director of Silver Wheaton. As Silver Wheaton's CEO, Smallwood (a) certified each of the Impugned Documents that are quarterly and annual disclosures of Silver Wheaton; and (b) signed, amongst other things, each of the Impugned Documents that are Silver Wheaton's Audited Annual Financial Statements and Prospectuses. At all times during the Class Period, Smallwood

was an officer and director of Silver Wheaton within the meaning of the Securities Legislation.

18. Gary Brown ("**Brown**") is an individual residing in British Columbia. At all times during the Class Period, Brown was the CFO of Silver Wheaton. As Silver Wheaton's CFO, Brown (a) certified each of the Impugned Documents that are quarterly and annual disclosures of Silver Wheaton; and (b) signed, amongst other things, each of the Impugned Documents that are Silver Wheaton's Prospectuses. At all times during the Class Period, Brown was an officer of Silver Wheaton within the meaning of the Securities Legislation.

V. EVENTS GIVING RISING TO THIS ACTION

19. During the Audit Period, Silver Wheaton and/or its subsidiaries, including SW Cayman, entered into precious metal purchase agreements with third party mining companies or affiliates, pursuant to which Silver Wheaton provided upfront and other payments in consideration for the purchase of all or a specified percentage of certain future precious metal production. Such agreements are referred to as "streaming agreements".

20. During the Audit Period, the activities that generated the income that Silver Wheaton reported on a consolidated basis were purportedly principally conducted by SW Cayman. SW Cayman did not pay tax in the Cayman Islands, or any other jurisdiction including Canada, on the income it earned from the streaming agreements. Silver Wheaton touted this fact in its disclosures issued during the Audit Period. For example, Silver Wheaton's AIF for 2008 stated:

> As the Corporation's profit is derived from its subsidiary, Silver Wheaton Caymans, which is incorporated and operated in the Cayman Islands, the Corporation's profits bear no income tax. The

> Corporation views the subsidiary's profits as part of its permanent investment in the subsidiary, and it has determined that those profits will be reinvested in foreign jurisdictions for the foreseeable future, therefore, no current income taxes have been recorded.

A. *Income Tax Act and Transfer Pricing Rules*

(i) General Principles

21. The Income Tax Act sets out rules ("**Transfer Pricing Rules**") which act to ensure that multinational enterprises do not obtain tax advantages by shifting income to a related party in a low tax jurisdiction through intra-group pricing policies that do not reflect the arm's length principle.

22. Transfer prices are the prices at which services, tangible property, and intangible property are traded across international borders between related parties. The Transfer Pricing Rules relate to transactions or arrangements between a taxpayer and non-resident person with whom the taxpayer does not deal at arm's length.

23. The Transfer Pricing Rules are found principally in section 247 of the Income Tax Act. The CRA (and its predecessors) also publishes statements, circulars, or memoranda from time to time that provide guidance regarding its interpretation of the Transfer Pricing Rules. Such documents include:

(a) Information Circular 87-2R, "International Transfer Pricing," dated September 27, 1999 ("**IC 87-2R**"); and

(b) various Transfer Pricing Memoranda (**"TPMs**"), including

(i) TPM-05 – Contemporaneous Documentation, dated October 13, 2004 ("**TPM-05**"); ;

(ii) TPM-05R – Requests for Contemporaneous Documentation, dated March 28, 2014 ("**TPM-05R**");

(iii) TPM-09 – Reasonable Efforts under section 247 of the Income Tax Act, dated September 18, 2006 ("**TPM-09**"); and

(iv) TPM-13 – Referrals to the Transfer Pricing Review Committee, dated October 30, 2012 ("**TPM-13**").

24. IC 87-2R also contains numerous references to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration ("**OECD Guidelines**"). IC 87-2R indicates that the OECD Guidelines should be consulted for more detailed discussion of certain principles contained in IC 87-2R, including with respect to the arm's length principle and application of the arm's length principle, among other things.

25. According to IC 87-2R, Canada's transfer pricing legislation (i) embodies the "arm's length principle;" and (ii) requires that, for tax purposes, the terms and conditions agreed to between non-arm's length parties in their commercial or financial relations be those that one would have expected had the parties been dealing with each other at arm's length. These rules ensure that taxpayers, who are non-arm's length members of a group and engage in transactions with other members of the group, report substantially the same amount of income as they would if they had been dealing with each other at arm's length.

26. IC 87-2R outlines that the arm's length principle:

(a) treats a group of parties not dealing at arm's length as if they operate as separate entities rather than as inseparable parts of a single unified business; and

(b) is generally based on a comparison of:

(i) prices or margins between non-arm's length parties on cross-border transactions; with

(ii) prices or margins on similar transactions between arm's length parties.

27. IC 87-2R reproduces the arm's length principle as stated in paragraph 1 of Article 9 of the OECD Model Tax Convention:

> "Where . . . conditions are made or imposed between . . . two [non-arm's length] enterprises in their commercial or financial relations which differ from those which would be made between [arm's length] enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly."

28. Section 251 of the Income Tax Act sets out certain enumerated circumstances under which persons are not considered to be acting at arm's length. Such circumstances include (i) a corporation and a person that controls the corporation; and (ii) where two corporations are controlled by the same person or group of persons. Where none of the circumstances in Section 251 exist, the question of whether parties to a transaction are considered to be dealing at arm's length is a context-specific fact-based analysis.

29. Prior to the Audit Period, the CRA summarized the applicable case law regarding the criteria used by the courts in determining when parties may be considered as not dealing with each other at arm's length in MNR Interpretation Bulletin IT-419R2 "Meaning of Arm's Length" (8 June 2004)[1] at para 23:

(a) was there a common mind which directs the bargaining for both parties to a transaction;

(b) were the parties to a transaction acting in concert without separate interests; and

(c) was there "*de facto*" control.

1 On November 26, 2015, Interpretation Bulletin IT-419R2 was replaced by Income Tax Folio S1-F5-C1which is identical to Interpretation Bulletin IT-419R2 for the purposes relevant to this action. References to Interpretation Bulletin IT-419R2 include Income Tax Folio S1-F5-C1 as is required by the context.

(ii) Relevant Statutory Provisions and Interpretive Guidelines

30. Subsection 247(2) of the Income Tax Act states:

> Where a taxpayer or partnership and a non-resident person with whom the taxpayer or the partnership, or a member of the partnership, does not deal at arm's length (or a partnership of which the non-resident person is a member) are participants in a transaction or series of transactions and
>
> (a) the terms or conditions made or imposed, in respect of the transaction or series, between any of the participants in the transaction or series differ from those that would have been made between persons dealing at arm's length, or
>
> (b) the transaction or series
>
> (i) would not have been entered in between persons dealing at arm's length, and
>
> (ii) can reasonably be considered not to have been entered into primarily for *bona fide* purposes other than to obtain a tax benefit,
>
> any amounts that, but for this section and section 245, would be determined for the purposes of this Act in respect of the taxpayer or the partnership for a taxation year or fiscal period shall be adjusted to the quantum or nature of the amounts that would have been determined if,
>
> (c) where only paragraph 247(2)(a) applies, the terms and conditions made or imposed, in respect of the transaction or series, between the participants in the transaction or series had been those that would have been made between persons dealing at arm's length, or
>
> (d) where paragraph 247(2)(b) applies, the transaction or series entered into between the participants had been the transaction or series that would have been entered into between persons dealing at arm's length, under terms and conditions that would have been made between persons dealing at arm's length.

31. Accordingly, depending on the nature of the impugned transaction, or series of transactions, the non-arm's length transaction or series involving a non-resident could be adjusted in one of two ways:

(a) If the impugned transaction, or series of transactions, would have otherwise occurred between persons dealing at arm's length, by adjusting the amounts to reflect the terms and conditions that would have been imposed between parties dealing at arm's length; or

(b) If the impugned transaction, or series of transactions, would not have been entered into by arm's length parties or where the transaction can reasonably be considered not to have been entered into primarily for *bona fide* business purposes, then the CRA may adjust the quantum or nature of the amounts that would otherwise be determined to the quantum or nature that would have been determined if the transaction or series had been the transaction or series that would have been entered into between parties dealing at arm's length under terms and conditions that would have been made between persons dealing at arm's length.

32. The CRA has the authority to both recalculate the taxpayer's taxable income on the basis of arm's length transfer prices, and then reassess the income tax payable based on the adjusted income amount. Late filing or other penalties may also be imposed in such circumstances.

33. The Transfer Pricing Rules also contain a penalty provision in subsection 247(3), which provides for a transfer pricing penalty when the net amount of transfer pricing adjustments exceed a specific threshold and reasonable efforts have not been made to set

and document its transfer prices. The penalty provision is described as follows in TPM-09:

> Subsection 247(3) of the Income Tax Act provides for a transfer pricing penalty when the net amount of transfer pricing adjustments exceeds a specific threshold. The penalty is intended to be a compliance penalty focusing on the efforts that a taxpayer makes to determine an arm's length price and not solely on the ultimate accuracy of the transfer prices. Therefore, provided a taxpayer makes reasonable efforts to determine and use arm's length prices or allocations, the transfer pricing penalty does not apply.

34. TPM-09 further states that penalties will generally not be imposed on taxpayers who have made reasonable efforts in good faith to set the price and terms of their transactions with related parties in a manner consistent with the arm’s length principle.

35. Subsection 247(4) of the Income Tax Act deems a taxpayer not to have made reasonable efforts if it has not kept contemporaneous documentation in respect of certain prescribed information. As described in TPM-05 and TPM-05R:

> 3. Subsection 247(4) of the Income Tax Act deems a taxpayer not to have made reasonable efforts to determine and use arm's length transfer prices or allocations unless the taxpayer has prepared or obtained records or documents which provide a description that is complete and accurate in all material respects of:
>
> > i. the property or services to which the transaction relates;
> >
> > ii. the terms and conditions of the transaction and their relationship, if any, to the terms and conditions of each other transaction entered into between the participants in the transaction;
> >
> > iii. the identity of the participants in the transaction and their relationship to each other at the time the transaction was entered into;
> >
> > iv. the functions performed, the property used or contributed, and the risks assumed for the transaction by the participants in the transaction;

> v. the data and methods considered and the analysis performed to determine the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, for the transaction; and
>
> vi. the assumptions, strategies, and policies, if any, that influenced the determination of the transfer prices or the allocations of profits or losses or contribution to costs, as the case may be, for the transaction.
>
> 4. This documentation must be prepared or obtained on or before the taxpayer's documentation-due date (defined in subsection 247(1)) for the tax year or fiscal period in which a transaction was entered into.

B. Silver Wheaton's Obligations in Accordance with the Transfer Pricing Rules

36. Silver Wheaton and SW Cayman are non-arm's length parties and as such are subject to the Transfer Pricing Rules under Section 247 of the Income Tax Act.

37. As noted above, IC 87-2R sets out that the Transfer Pricing Rules embody the arm's length principle and are purposed with ensuring "that taxpayers, who are non-arm's length members of a group and engage in transactions with other members of the group, report substantially the same amount of income as they would if they had been dealing with each other at arm's length".

38. IC 87-2R refers to the OECD Guidelines for "more detailed discussion of the principles" in IC 87-2R. The OECD Guidelines are intended to provide guidance, to both taxpayers and tax administrations, on the application of the arm's length principle. It is generally necessary to look to both IC 87-2R and the OECD Guidelines for guidance on applying the transfer pricing rules under Section 247 of the Income Tax Act.

39. Paragraph 1.13 of the OECD Guidelines states that "…the arm's length principle usually requires taxpayers and tax administrations to evaluate uncontrolled transactions and the

business activities of independent enterprises, and to compare these with the transactions and activities of associated enterprises". In Paragraph 1.33, the OECD Guidelines further states that "[a]pplication of the arm's length principle is generally based on a comparison of the conditions in a controlled transaction with the conditions in transactions between independent enterprises. In order for such comparisons to be useful, the economically relevant characteristics of the situations being compared must be sufficiently comparable".

40. Paragraph 1.42 of the OECD Guidelines states that "In transactions between two independent enterprises, compensation usually will reflect the functions that each enterprise performs (taking into account assets used and risks assumed). Therefore, in determining whether controlled and uncontrolled transactions or entities are comparable, a functional analysis is necessary. The functional analysis seeks to identify and compare the economically significant activities and responsibilities undertaken, assets used and risks assumed by the parties to the transactions".

41. Furthermore, the OECD Guidelines clarify that the functional analysis should consider the type of assets used, including valuable intangibles and financial assets, and the nature of the assets, as well as the material risks assumed by each party. The functions carried out (taking into account the assets used and the risks assumed) will determine to some extent the allocation of risks between the parties. The OECD Guidelines also state that "Usually, in the open market, the assumption of increased risk would also be compensated by an increase in the expected return".

42. Silver Wheaton was required to conduct a functional analysis and follow such analysis to determine their obligations under the Transfer Pricing Rules. If Silver Wheaton had

conducted a functional analysis of Silver Wheaton and SW Cayman, including the functions undertaken, risks borne, and assets contributed by both parties, it would be apparent that Silver Wheaton performed the significant functions, bore most of the risks, and contributed most of the assets associated with the SW Cayman business. Following the principle from Paragraph 1.42, outlined above, it would follow that arm's length parties would take this into account in determining the compensation to Silver Wheaton.

43. Silver Wheaton had disclosed in its AIFs that the Corporation's (i.e. the consolidated group's) profit was derived from SW Cayman and that the Corporation's profits bore no income tax. However, a functional analysis would show that SW Cayman did little to contribute, either in terms of functions performed or assets deployed, to the business that generated these profits, as this was done by Silver Wheaton. Furthermore, Silver Wheaton was the entity that bore all material risks associated with that business. Therefore, it is not reasonable that the profits associated with the business were allocated entirely to SW Cayman as this determination did not adequately recognize the functions performed, assets contributed, and risks borne by Silver Wheaton.

C. Relationship between Silver Wheaton and SW Cayman

44. Throughout the Audit Period, all material operational and strategic decisions in respect of SW Cayman were subject to the direction and approval of officers or employees of Silver Wheaton, and substantially all material agreements to which SW Cayman was a party were drafted by, and executed with the approval of, officers and/or representatives of Silver Wheaton.

45. All employees of SW Cayman had very limited meaningful strategic or managerial decision-making authority. Except for those employees that carried out clerical or local

compliance tasks, SW Cayman employees directly reported to, or accepted instructions from, officers and/or employees of Silver Wheaton.

46. During the Audit Period, employees of both Silver Wheaton and SW Cayman did not consider those companies to be separate entities, and referred to SW Cayman as a "branch office" of Silver Wheaton. Between approximately 2004 to December 2007, SW Cayman did not even have its own independent offices and instead operated out of a desk in the Cayman Islands office of Endeavour Financial Limited (Cayman).

47. Employees and/or officers of Silver Wheaton exercised final authority over accounting and financial matters of SW Cayman and principally guided all accounting functions. If SW Cayman needed budget increases for additional spending, the final approval for any such increases was required from Silver Wheaton's CFO. For example, all budgetary increases for spending on office supplies such as computers, communication equipment, and printers required approval from Silver Wheaton. Silver Wheaton also approved the purchase of business cards and letterhead for SW Cayman, which were manufactured in Canada and sent to SW Cayman.

48. Nik Tatarkin, who was the Executive Director of SW Cayman from December 2008 until December 2012, when he became President of SW Cayman, reported to Silver Wheaton officers or employees regarding all matters that were outside his limited pre-approved authority. For example, Tatarkin required approval from Silver Wheaton in order to approve a salary advance for a SW Cayman employee. Tatarkin's yearly reviews were conducted by Silver Wheaton executives, and salary increases for SW Cayman senior staff were authorized by Silver Wheaton.

49. Silver Wheaton negotiated and drafted the streaming agreements to which SW Cayman was a party, and then sent such agreements to SW Cayman via Fedex for signature.

50. SW Cayman derived a substantial amount of funding and capital, either directly or indirectly, from Silver Wheaton. SW Cayman would wire a significant amount of money to Silver Wheaton every month, but when SW Cayman required money for operations or to secure additional streaming contracts with mines, Silver Wheaton would wire the necessary funds to SW Cayman. This money allowed SW Cayman to fund agreements to which it was a party in respect of future streaming rights in mines.

51. After silver was mined in respect of a streaming agreement, Silver Wheaton wired additional funds to SW Cayman so that it could purchase silver pursuant to that agreement. The majority of the revenue generated from the sale of that silver would flow through SW Cayman's accounts and ultimately arrive at Silver Wheaton's accounts.

52. Employees of SW Cayman were instructed to take steps to avoid suspicion relating to these wire transfers. For example, employees were instructed not to include details on the notes or descriptions for the wire transfers. Employees were also instructed to break up large wire transfers into several smaller transfers, resulting in increased transaction fees while the same amount was being transferred.

53. The hard-copy confirmations of such wire transfers were hidden from third-party auditors during annual visits to the SW Cayman office for annual audits from 2008 through 2013.

54. Prior to the arrival of CRA officials at SW Cayman for a tax audit, Silver Wheaton sent a team of internal accountants and auditors to prepare SW Cayman employees for the audit.

The Silver Wheaton team and Tatarkin instructed SW Cayman employees to provide knowingly false answers to questions posed by CRA officials so as to avoid suspicion.

55. SW Cayman essentially functioned as a conduit for money from Silver Wheaton to secure streaming contracts in silver mines, and then money from the sale of silver subject to the streaming contracts would flow through SW Cayman to Silver Wheaton. Throughout the Audit Period, Silver Wheaton performed a significant amount, if not substantially all, material strategic, managerial, and operational functions and provided substantially all of the funding relating to the profits earned by SW Cayman's operations.

V. THE DEFENDANTS' MISREPRESENTATIONS

56. During the Class Period, the Defendants withheld material facts and made misrepresentations to Class Members regarding:

(a) management's belief that the CRA Audit was not expected to have a material adverse effect on Silver Wheaton; and

(b) the compliance of Silver Wheaton's financial statements with IFRS.

A. *Misrepresentations Regarding the Expected Outcome of the CRA Audit.*

57. Throughout the Class Period, the Defendants falsely represented that, based on information available to management, the CRA Audit was not expected to have a material adverse effect on Silver Wheaton.

58. All Impugned Documents that are MD&As and financial statements contained a statement substantially similar to the below (reproduced from Silver Wheaton's MD&A of Results of Operations and Financial Condition for the Three and Six Months Ended June 30, 2013):

> Due to the size, complexity and nature of the Company's operations, various legal and tax matters are outstanding from time to time, including an audit by the Canada Revenue Agency of the Company's international transactions covering the 2005 to 2010 taxation years, which is currently ongoing. By their nature, contingencies will only be resolved when one or more future events occur or fail to occur. The assessment of contingencies inherently involves the exercise of significant judgment and estimates of the outcome of future events. **Based on information available to management at August 14, 2013, the outstanding legal and tax matters are not expected to have a material adverse effect on the Company.** However, if the Company is unable to resolve any of these matters favorably, there may be a material adverse impact on the Company's financial performance, cash flows or results of operations. In the event that management's estimate of the future resolution of these matters changes, the Company will recognize the effects of the changes in its consolidated financial statements in the appropriate period relative to when such changes occur." [Emphasis Added]

59. Such statements were false, misleading, and constituted misrepresentations within the meaning of the Securities Legislation and the common law.

60. The statement itself was a misrepresentation. Given the facts available to management and the Defendants, there was no reasonable basis for drawing the conclusion that the CRA Audit would not have a material adverse result on Silver Wheaton.

61. To the extent that any such statements purported to be "forward-looking information", the Defendants are still liable for such statements that were misrepresentations, as they had no reasonable basis for drawing these conclusions or the corresponding assumptions on which the conclusions were based.

62. In addition, with respect to all of the Impugned Documents, the Defendants were aware of, and failed to disclose, the following material facts required to be stated in order to

make their statements regarding the CRA Audit not misleading in light of the circumstances under which they were made:

(a) the true nature of the relationship between Silver Wheaton and SW Cayman as particularized herein, including

(i) SW Cayman could not have performed the material commercial functions of its business and relied on Silver Wheaton to perform these functions and provide the necessary funding to run the business;

(ii) all material operational, managerial and strategic decisions in respect of SW Cayman required the direction and approval of officers or employees of Silver Wheaton;

(iii) substantially all material agreements to which SW Cayman was a party were drafted by, and executed with, the required approval of officers or representatives of Silver Wheaton;

(iv) SW Cayman employees reported directly to, or accepted instructions from, officers or employees of Silver Wheaton;

(v) SW Cayman essentially functioned as a conduit for money from Silver Wheaton to secure streaming contracts in silver mines, and then for money from the sale of silver to flow back to Silver Wheaton; and

(b) that employees of SW Cayman were instructed to structure wire payments to Silver Wheaton in a way that would not raise suspicion;

(c) that employees of SW Cayman withheld from third-party auditors information relating to wire transfers between SW Cayman and Silver Wheaton; and

(d) that employees of SW Cayman were instructed by Silver Wheaton employees to, and did, provide false information to CRA officials in the course of the CRA Audit, regarding the true nature of the connection between SW Cayman and Silver Wheaton.

63. By failing to disclose such information, the Defendants misrepresented the likelihood that Silver Wheaton would incur additional tax obligations under the Transfer Pricing Rules, depriving Class Members of information required to assess the reasonableness of management's assertion that it did not expect the CRA Audit to result in a material adverse event.

B. ***Misrepresentations Regarding Compliance with IFRS***

64. Throughout the Class Period, the Defendants falsely represented that Silver Wheaton's financial statements were prepared in accordance with International Financial Reporting Standards ("**IFRS**") as issued by the International Accounting Standards Board ("**IASB**"). Such representations were made in Impugned Documents that were MD&As, financial statements, and prospectuses.

65. Standards issued by the International Accounting Standards Committee ("**IASC**") (the predecessor of the IASB) are still in effect and are called International Accounting Standards ("**IAS**").

66. Under IAS 37, Silver Wheaton was required to record, as an uncertain tax position liability in their financial statements, an estimate of their income tax obligations under the Transfer Pricing Rules if it was "more likely than not" that the CRA Audit would result in Silver Wheaton incurring additional income taxes (and applicable interest and penalties).

67. Given the relationship between Silver Wheaton and SW Cayman, as particularized herein, as well as the information available to Silver Wheaton's management at the time of the CRA Audit, the Defendants knew or should have known that it was more likely

than not that the CRA Audit would result in Silver Wheaton incurring additional income tax obligations. Accordingly, they were required to record an uncertain tax position liability of approximately Cdn$353 million, or such other best estimate to settle the obligation, in their financial statements throughout the Class Period. Their failure to do so was a violation of IFRS.

68. Additionally, pursuant to IFRS, IAS 37 and IAS 12, Silver Wheaton was required to disclose uncertain tax positions giving rise to a contingent tax liability in the notes to its financial statements.

69. IAS 37 defines "contingent liability" as "a possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity". IAS 12 further clarifies the disclosure obligations as they relate to Silver Wheaton's situation in stating that "[a]n entity discloses any tax-related contingent liabilities and contingent assets in accordance with IAS 37…contingent liabilities and contingent assets may arise, for example, from unresolved disputes with the taxation authorities".

70. IAS 12 and IAS 37 required Silver Wheaton to disclose the existence of the CRA Audit in the notes to its financial statements unless the likelihood that the Audit would result in a notice of assessment by the CRA was "remote". Where disclosure of a contingent tax position liability is required, the disclosure must include the following information: (a) an estimate of the dollar amount of the contingent tax position liability; (b) an indication of the uncertainties relating to the amount or timing of any outflow; and (c) the possibility of any reimbursement.

71. Given the relationship between Silver Wheaton and SW Cayman as particularized herein, the Defendants knew or should have known that it was more than a "remote" possibility that the CRA Audit would result in a proposal to reassess Silver Wheaton's income tax obligations, and Silver Wheaton was therefore required to recognize and record, amongst other things, the contingent tax position liability of approximately Cdn$353 million, or such other best estimate to settle the obligation, in the notes to its financial statements throughout the Class Period. The failure to do so was a violation of IFRS.

72. Accordingly, the statements in the Impugned Documents that Silver Wheaton's financial statements were prepared in accordance with IFRS were misrepresentations within the meaning of Securities Legislation and the common law.

VI. THE INDIVIDUAL DEFENDANTS' FALSE CERTIFICATIONS

73. Pursuant to National Instrument 52-109, Smallwood, as CEO, and Brown, as CFO, were required at all material times to certify the Impugned Documents that were Silver Wheaton's financial statements and MD&As and AIFs.

74. *Inter alia*, Smallwood and Brown certified, at the relevant times, that:

(a) such documents did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made;

(b) such documents fairly presented in all material respects the financial condition, financial, financial performance, and cash flows of Silver Wheaton;

(c) they were responsible for establishing and maintaining Silver Wheaton's disclosure controls and procedures as well as Silver Wheaton's internal controls over financial reporting;

(d) they had designed the disclosure controls and procedures, or caused them to be designed under their supervision, to provide reasonable assurance that material information relating to Silver Wheaton was made known to them by others, particularly during the period in which the documents were being prepared and information required to be disclosed by Silver Wheaton in its annual filings, interim filings or other reports filed or submitted under Securities Legislation was recorded, processed, summarized and reported within the time periods specified in Securities Legislation;

(e) they had "designed internal controls over financial reporting, or caused it to be designed under [their] supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the issuer's GAAP"; and

(f) in respect of Silver Wheaton's annual filings, they had evaluated, or caused to be evaluated under their supervision, the effectiveness of Silver Wheaton's disclosure controls and procedures and their internal controls over financial reporting, at the financial year end and had disclosed in its annual MD&As their conclusions about the effectiveness of Silver Wheaton's controls.

75. These certifications were false and were themselves misrepresentations.

76. The Individual Defendants oversaw the preparation and reporting of Silver Wheaton's disclosures to the market and knew or should have known of the misrepresentations in the Impugned Documents.

77. The Individual Defendants authorized, permitted or acquiesced to the release of the Impugned Documents, which contained the misrepresentations.

VII. THE TRUTH IS REVEALED

78. On July 6, 2015, after market close, Silver Wheaton issued a press release announcing that it had received a proposal letter from the CRA dated July 6, 2015, in which the CRA proposed to reassess Silver Wheaton under various rules contained in the Income Tax Act. The press release included the following statements:

> **SILVER WHEATON REMAINS CONFIDENT IN BUSINESS STRUCTURE FOLLOWING RECEIPT OF CRA PROPOSAL LETTER**
>
> **Vancouver, British Columbia** – Silver Wheaton Corp. ("Silver Wheaton" or the "Company") (TSX:SLW) (NYSE:SLW) announces that it has received a proposal letter dated July 6, 2015 (the "Proposal") from the Canada Revenue Agency (the "CRA") in which the CRA is proposing to reassess Silver Wheaton under various rules contained in the Income Tax Act (Canada).
>
> The Proposal outlines CRA's position that the transfer pricing provisions of the Income Tax Act (Canada) relating to income earned by our foreign subsidiaries outside of Canada should apply such that the income of Silver Wheaton subject to tax in Canada should be increased for the 2005 to 2010 taxation years (the "Relevant Taxation Years") by approximately Cdn$715 million (US$567 million). The issuance of the Proposal does not require the Company to pay any amount to the CRA at this time.
>
> Management believes that the Company has filed its tax returns and paid applicable taxes in compliance with Canadian tax law. Silver Wheaton intends to vigorously defend its tax filing positions and is now in the process of preparing its response to the Proposal.

> "We remain confident in our business structure which we believe is consistent with that typically used by Canadian companies, including Canadian streaming companies, that have international operations," said Randy Smallwood, President and Chief Executive Officer of Silver Wheaton.
>
> "Generally a company is taxable in Canada on its income earned in Canada, while non-Canadian income earned by foreign subsidiaries is not subject to Canadian income tax. However, with this Proposal, the CRA is seeking to tax, within Canada, streaming income earned outside of Canada by our foreign subsidiaries related to mines located outside of Canada," added Smallwood.
>
> Failing a resolution at the Proposal stage, the CRA may proceed to issue notices of reassessment for one or more of the Relevant Taxation Years. If the CRA reassesses Silver Wheaton on the basis outlined in the Proposal, and assuming that Silver Wheaton would be assessed taxes on the foreign subsidiaries' income on the same basis as its Canadian income, Silver Wheaton currently estimates on a preliminary basis that it would be subject to federal and provincial tax of approximately US$150 million in respect of the Relevant Taxation Years. The Proposal also indicates that the CRA is seeking to apply transfer pricing penalties of approximately Cdn$72 million (US$57 million) in respect of the Relevant Taxation Years. The Proposal does not indicate the amount of interest or other penalties in respect of the Relevant Taxation Years. Further, taxation years subsequent to 2010 remain open to audit by the CRA.

79. Following this announcement, the price of Silver Wheaton's shares on the TSX declined from a closing price of $22.21 on July 6, 2015 to a closing price of $19.62 on July 7, 2015.

80. This announcement was a public correction of the misrepresentations particularized herein. Further information, known only to the Defendants, may be forthcoming.

VIII. POST CLASS PERIOD EVENTS

81. On September 24, 2015, after market close, further particulars were revealed by Silver Wheaton in another press release that announced that it had received the notice of assessment from the CRA, which was consistent with the July 6, 2015 proposal letter. In

the release, it was announced that, in issuing the reassessment, the CRA was seeking to increase Silver Wheaton's taxable income by approximately Cdn$715 million, which would result in income taxes of Cdn$201 million. In addition, the release stated that the CRA was seeking to impose transfer pricing penalties of approximately Cdn$72 million and interest and other penalties of Cdn$81 million. Thus, the total tax, interest and penalties sought by the CRA for the 2005-2010 taxation years amounted to Cdn$353 million.

82. In challenging the CRA assessment, Silver Wheaton was required to make a deposit of 50% of the reassessed amounts of tax, interest and penalties. On March 15, 2016, Silver Wheaton posted security in the form of a letter of guarantee in the amount of Cdn$192 million, which included accrued interest plus estimated interest for the following year.

83. On January 19, 2016, the CRA commenced an audit of Silver Wheaton's international transactions covering the 2011-2013 taxation years. The CRA has not yet issued a proposal or reassessment. Silver Wheaton has estimated that if the CRA were to reassess on a similar basis as the Audit Period, the CRA would seek to impose income tax of approximately US$310 million, not inclusive of interest and possible transfer pricing penalties.

IX. RIGHTS OF ACTION

A. *Negligent Misrepresentation*

84. On behalf of the Class, the Plaintiff pleads negligent misrepresentation in respect of all of the Impugned Documents. The misrepresentations alleged herein were contained in or were incorporated by reference into the Impugned Documents.

85. The Impugned Documents were prepared, in part, for the purpose of attracting investment and inducing members of the investing public to purchase Silver Wheaton securities. Silver Wheaton filed the Impugned Documents on SEDAR for the benefit of the market and the Class Members, and communicated those documents to the public. Those documents were also filed on EDGAR.

86. The Defendants knew and intended that the Class Members would reasonably rely, to their detriment, upon such documents in making the decision to purchase Silver Wheaton's securities.

87. The Defendants were in a relationship of proximity with the Class Members and it was reasonably foreseeable that any misrepresentations in the Impugned Documents could cause damage to the Class Members.

88. The Class Members read and reasonably relied on the Impugned Documents for the purpose for which they were prepared.

89. Silver Wheaton had a duty at common law to Class Members to ensure the accuracy of its financial disclosures and to make full, true, and accurate disclosure of material facts with respect to its business and affairs.

90. The Individual Defendants, by virtue of their positions as officers and/or directors of Silver Wheaton, also owed a duty to Class Members to ensure the accuracy of its financial disclosures and to make full, true, and accurate disclosure of material facts with respect to its business and affairs.

91. Further, Silver Wheaton and the Individual Defendants have similar statutory obligations under Canadian securities law to ensure the accuracy of these disclosure documents.

During the Class Period, the Individual Defendants certified that the quarterly and annual disclosure documents did not contain any untrue statements of material fact or omit to state a material fact necessary to make the statements made not misleading. They also certified that the financial statements and other financial information fairly presented Silver Wheaton's financial condition, results of operations and cash flows.

92. The Defendants breached the standard of care required in the circumstances by making the misrepresentations alleged herein. The misrepresentations were made negligently or recklessly.

93. The Individual Defendants made the misrepresentations alleged herein by signing, authorizing, permitting, and/or acquiescing to the release of the Impugned Documents.

94. The Defendants further knew and intended that the information contained in the Impugned Documents would be incorporated into the price of Silver Wheaton's publicly traded Securities such that the trading price of those Securities would at all times reflect the information contained in the Impugned Documents.

95. The Plaintiff and the other Class Members relied upon the misrepresentations alleged herein in making the decision to purchase and/or hold Securities of Silver Wheaton, and suffered damages when the truth was revealed.

96. Alternatively, the Plaintiff and the other Secondary Market Class Members relied upon the misrepresentations alleged herein by the act of acquiring Securities of Silver Wheaton in an efficient market that promptly incorporated into the price of those Securities all publicly available material information regarding Silver Wheaton, including the misrepresentations alleged herein. As a result, the repeated publication of these

misrepresentations in the Impugned Documents caused the price of Silver Wheaton's Securities to trade at inflated prices during the Class Period, thus directly resulting in damage to the Plaintiff and the other Class Members.

B. ***Part XXIII.1 of the OSA***

97. On behalf of the Secondary Market Class Members, the Plaintiff asserts the right of action found in Part XXIII.1 of the OSA, and, if required, the equivalent sections of the Securities Legislation, against all of the Defendants.

98. Each of the Impugned Documents is a "Core Document" within the meaning of the OSA and the Securities Legislation.

99. Each of the Impugned Documents contained one or more of the misrepresentations alleged herein. Such misrepresentations were misrepresentations within the meaning of the OSA and Securities Legislation.

100. Silver Wheaton is a reporting issuer and a responsible issuer within the meaning of the OSA and the Securities Legislation. It released the Impugned Documents which contained the misrepresentations alleged herein.

101. Each of the Individual Defendants was an officer and/or director of Silver Wheaton at the material times. Each of the Individual Defendants authorized, permitted or acquiesced in the release of some or all of these Impugned Documents.

102. The Secondary Market Class acquired Silver Wheaton's Securities following the release of one or more Impugned Documents and before the misrepresentations contained therein were publicly corrected.

C. ***Negligence Simpliciter in Connection with the Offering***

103. On behalf of those Primary Market Class Members who acquired Silver Wheaton Shares in the Offering, the Plaintiff asserts negligence *simpliciter*.

104. The Defendants issued the Prospectus that was filed on SEDAR March 9, 2015 (the "**Prospectus**"), or caused it to be issued, and caused the Offering to occur while the Prospectus contained misrepresentations.

105. Silver Wheaton and, by virtue of their position of authority and responsibility within Silver Wheaton, Smallwood and Brown, owed a duty to ensure that the Prospectus they issued made full, true and plain disclosure of all material facts relating to the Shares offered thereby, including full disclosure of the circumstances relevant to the ongoing CRA Audit.

106. The reasonable standard of care expected in the circumstances required the Defendants to prevent the Offering from occurring prior to the correction of the misrepresentations. Accordingly, the Defendants breached the standard of care, and violated their duties to those Class Members who purchased Shares pursuant to the Prospectus.

107. If Silver Wheaton, Smallwood and Brown had exercised the duty of care expected from them in the circumstances, then the Offering would not have happened. In the alternative, the Offering would have happened at a price that would have reflected the true value of the Silver Wheaton's Shares.

108. As a result of the Defendants' breach of their duty of care, the Offering took place and those Class Members who purchased Shares pursuant to the Prospectus suffered damages as a result of purchasing the Shares at an inflated price. Had the Defendants satisfied their

duty of care to such Class Members, then those Class Members would not have purchased the Shares that they acquired under the Prospectus, or they would have purchased them at a lower price that reflected their true value.

D. *Part XXIII of the OSA*

109. As against all Defendants, and on behalf of the Primary Market Class Members, the Plaintiff asserts the right of action set forth in s. 130 of the OSA and, if necessary, the equivalent provisions of the Securities Legislation.

110. Silver Wheaton issued the Prospectus, which contained the misrepresentations alleged herein, or they were contained in the disclosure documents incorporated by reference therein.

111. Smallwood was a director of Silver Wheaton at the time in which the Prospectus was issued. Additionally, Smallwood and Brown, as Silver Wheaton's CEO and CFO respectively, both signed the Prospectus.

X. DAMAGES

112. The Plaintiff and the other Class Member suffered damages as a result of the Defendants' breach of their duties at law by making the misrepresentations particularized herein.

113. The Plaintiff and the other Class Members suffered damages equivalent to the inflation in the price of the Securities they acquired during the Class Period which was related to the misrepresentations alleged herein. If the Defendants had not breached their duties and made the misrepresentations described above, Silver Wheaton's Securities would not have traded or been sold at artificially high levels that Class Members paid for them, and the Class Members would not have suffered losses as alleged herein.

114. The Plaintiff pleads that the conduct of the Defendants was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, motivated by economic considerations, and amounted to an abuse of the capital markets. Such conduct renders the Defendants liable to pay punitive damages.

XI. THE RELATIONSHIP BETWEEN THE MISREPRESENTATIONS AND THE PRICE OF SILVER WHEATON'S SECURITIES

115. The Price of Silver Wheaton's Securities was directly affected during the Class Period by the issuance of the Impugned Documents. The Defendants were aware at all material times of the effect of Silver Wheaton's disclosure documents upon the price of Silver Wheaton's Securities.

116. The Impugned Documents were filed with SEDAR and the TSX, and otherwise made available to the public, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press.

117. Silver Wheaton routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of Silver Wheaton Securities. Silver Wheaton either provided copies of the above referenced documents or links thereto on its website.

118. Silver Wheaton regularly communicated with public investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including press releases on newswire services in Canada, the United States and elsewhere. Each time Silver Wheaton

communicated new material information about Silver Wheaton's financial results to the public, the price of Silver Wheaton's Securities was directly affected.

119. Silver Wheaton was the subject of analysts' reports that incorporated certain of the material information contained in the Impugned Documents, with the effect that any recommendations to purchase Silver Wheaton Securities in such reports during the Class Period were based, in whole or in part, upon that information.

120. At all material times during the Class Period, Silver Wheaton's Securities were traded, among other places, on the TSX, which is an efficient and automated market. The price at which Silver Wheaton's Securities traded promptly incorporated material information from Silver Wheaton's disclosure documents about Silver Wheaton's business and affairs, including the misrepresentations particularized herein, which were disseminated to the public through the documents referred to above and distributed by Silver Wheaton, as well as by other means.

XII. VICARIOUS LIABILITY OF SILVER WHEATON

121. In addition to its direct liability, Silver Wheaton is vicariously liable for the acts and/or omissions of the Individual Defendants and its other officers, directors, and employees because their acts and omissions with respect to the misrepresentations were carried out while they were engaged in the management, direction and control of the business affairs of Silver Wheaton.

XIII. REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

122. This action has a real and substantial connection with Ontario because, among other things:

(a) Silver Wheaton is a reporting issuer in Ontario;

(b) the shares of Silver Wheaton trade on the TSX, which is located in Ontario;

(c) a substantial proportion of the Class Members reside in Ontario; and

(d) a substantial portion of the damages sustained by Class Members were sustained in Ontario.

XIV. RELEVANT LEGISLATION

123. The Plaintiff pleads and relies on the *Courts of Justice Act*, RSO 1990, c C.43, the CPA, the OSA and the Securities Legislation, all as amended.

XV. SERVICE OUTSIDE ONTARIO WITHOUT LEAVE

124. The Plaintiff pleads and relies on rule 17.02(g), (n), and (p) of the *Rules of Civil Procedure* to serve this claim outside Ontario without leave.

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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