

AMENDED THIS January 18, 2021 PURSUANT TO
MODIFIÉ CE PERELEE, J. CONFORMÉMENT À
☐ RULE/LA RÈGLE 26.02 ()
☒ THE ORDER OF PERELEE, J.
L'ORDONNANCE DU
DATED / FAIT LE January 11, 2021
M. Wallace
Matthew Wallace Registrar **ONTARIO**
REGISTRAR **SUPERIOR COURT OF JUSTICE**
GREFFIER **SUPERIOR COURT OF JUSTICE**

Court File No.: CV-16-548624

B E T W E E N:

CRAIG JOHNSON AND WOLFGANG VAETH

Plaintiffs

- and -

**NORTH AMERICAN PALLADIUM LTD., PHIL DU TOIT,
DAVID LANGILLE AND KPMG LLP**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED SECOND FRESH AS AMENDED STATEMENT OF CLAIM
(Statement of Claim issued March 14, 2016)

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyers or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH

TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date Issued: March 14, 2016

Issued by: "M. Brenton"
Local Registrar
Superior Court of Justice
393 University Ave., 10th Floor
Toronto, ON M5G 1E6

TO: STIKEMAN ELLIOTT LLP

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Lawyers for the

Defendant:
KPMG LLP

DEFINED TERMS

1. In addition to the terms defined in ss. 1(1) and 138.1 of the *Securities Act*, R.S.O. 1990, c. S. 5, and elsewhere herein, the following terms used throughout this Amended Second Fresh as Amended Statement of Claim have the meanings indicated below:

- (a) “AIF” means an Annual Information Form, as defined in **NI 51-102**;
- (b) “BCP” means Brookfield Capital Partners;
- ~~(b)~~(c) “CIBC” means CIBC World Markets, Inc;
- ~~(e)~~(d) “CJA” means the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- ~~(d)~~(e) “Class A” means all persons, other than **Excluded Persons**, who acquired **NAP**’s securities during **Class Period A** and who held some or all of those securities at the close of trading on April 14, 2015;
- ~~(e)~~(f) “Class B” means all persons, other than **Excluded Persons**, who acquired **NAP**’s securities during **Class Period B** and who held some or all of those securities until after the close of trading on April 14, 2015;
- ~~(f)~~(g) “Class Period A” means the period from July 30, 2014, to and including April 14, 2015;
- ~~(g)~~(h) “Class Period B” means the period between June 17, 2013 and July 29, 2014;
- ~~(h)~~(i) “Class Periods” means collectively, **Class Period A** and **Class Period B**;
- ~~(i)~~(j) “Company” means North American Palladium Ltd.;
- ~~(j)~~(k) “Corporate ~~Defendants~~Defendant” means **NAP** and the ~~Individual Defendants~~;
- ~~(k)~~(l) “CPA” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- ~~(l)~~(m) “du Toit” means Phil du Toit, **NAP**’s President and chief executive officer at all relevant times;
- ~~(m)~~(n) “Equivalent Securities Acts” means, collectively, the *Securities Act*, R.S.A. 2000, c. S-4, as amended; the *Securities Act*, R.S.B.C. 1996, c 418, as amended; *The Securities Act*, C.C.S.M. c. S50, as amended; the *Securities Act*, S.N.B. 2004, c. S-5.5, as amended; the *Securities Act*, R.S.N.L. 1990, c S-13, as amended; the *Securities Act*, R.S.N.S. 1989, c. 418, as amended; the *Securities Act*, R.S.P.E.I.

1988, c S-3.1, as amended; the *Securities Act*, R.S.Q. c V-1.1, as amended; and *The Securities Act, 1988*, S.S. 1988-89, c. S-42.2, as amended;

~~(n)~~(o) **“Excluded Persons”** means **NAP**’s subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, and any member of the **Individual Defendants**’ families and any entity in which any of them **NAP** has or had during the **Class Periods** any legal or de facto controlling interest;

~~(o)~~(p) **“FYE”** means Fiscal Year End, the one-year period ending December 31;

~~(p)~~(q) **“GAAP”** means Generally Accepted Accounting Principals in Canada;

~~(q)~~(r) **“GAAS”** means Canadian Generally Accepted Auditing Standards;

~~(r)~~ **“Going Concern Warning”** means a note in the financial statements of a company that indicates that there is material uncertainty as to whether the company can continue as a going concern;

(s) **“IFRS”** means International Financial Reporting Standards;

(t) **“Impugned Documents”** means certain statements that are alleged to contain misrepresentations released on **SEDAR** by **NAP** on July 30, 2014, November 5, 2014, February 19, 2015, and March 31, 2015;

~~(u)~~ **“Individual Defendants”** means **du Toit** and **Langille**;

~~(v)~~(u) **“KPMG”** means KPMG LLP, a Canadian limited liability partnership;

~~(w)~~(v) **“Langille”** means David Langille, **NAP**’s chief financial officer at all relevant times;

~~(x)~~(w) **“LDI”** means the Lac des Iles mine;

~~(y)~~(x) **“Loan Agreement”** means the June 7, 2013, senior secured term loan financing agreement for USD \$130 million between BCP III **NAP** L.P. by its general partner Brookfield Capital Partners Ltd., as lender, and **NAP**, as borrower, and Lac Des Iles Mines Ltd., as guarantor, due June 7, 2017;

~~(z)~~(y) **“MD&A”** means **NAP**’s Management Discussion and Analysis, published on **SEDAR** on July 30, 2014, November 5, 2014 and February 19, 2015;

~~(aa)~~(z) **“NAP”** means North American Palladium Ltd.;

~~(bb)~~(aa) **“NI 51-102”** means National Instrument 51-102: *Continuous Disclosure Obligations*;

~~(ee)~~(bb) “NYSE MKT” means the stock exchange situated in New York City with a focus on “small cap” issuers;

~~(dd)~~(cc) “OSA” means the *Securities Act*, R.S.O. 1990 c. S.5, as amended;

~~(ee)~~(ddd) “Q1”, “Q2”, “Q3” and “Q4” means the three-month period ended March 31, June 30, September 30, and December 31, respectively;

~~(ff)~~(ee) “Recapitalization” means NAP’s contemplated restructuring process pursuant to the *Canada Business Corporations Act* whereby existing holders of NAP’s equity will retain, in aggregate, 2% of the common shares outstanding on a fully-diluted basis after giving effect to the Plan of Arrangement, e.g., the equity interests will be diluted by 98%;

~~(gg)~~(ff) “SEC” means the U.S. Securities and Exchange Commission;

~~(hh)~~(gg) “SEDAR” means the System for Electronic Document Analysis and Retrieval, a filing system for the Canadian Securities Administrators; and

~~(ii)~~(hh) “TSX” means the Toronto Stock Exchange.

RELIEF CLAIMED

2. The Plaintiffs claim on their own behalf and on behalf of the members of the Classes:
 - (a) An order pursuant to s. 5 of the *CPA* certifying this action as a class proceeding, appointing Craig Johnson as the representative plaintiff for Class A, and appointing Wolfgang Vaeth as the representative plaintiff for Class B;
 - (b) With respect to Class A, an order granting leave to pursue the statutory causes of action set out in Part XXIII.1 of the *OSA* and the comparable provisions in the Equivalent Securities Acts effective to the date this action was commenced;
 - (c) A declaration that during Class Period A, the Corporate ~~Defendants~~ Defendant made material misrepresentations within NAP’s core and non-core documents released between July 30, 2014 and April 14, 2015, related to the Company’s business, operations and finances;

- (d) A declaration that the Corporate ~~Defendants~~Defendant made these misrepresentations negligently or knowingly, pending the evidence;
- ~~(e) A declaration that during Class Period A, KPMG made the misrepresentation within NAP's core document released February 18, 2015, related to the Company's business, operations and finances;~~
- ~~(f) A declaration that KPMG made the misrepresentation negligently;~~
- (g) A declaration that the Corporate ~~Defendants~~Defendant breached s. 75 of the *OSA* and the comparable provisions in the Equivalent Securities Acts;
- ~~(h) A declaration that NAP is vicariously liable for the acts and omissions of the Individual Defendants;~~
- (i) Statutory secondary market damages in the sum of ~~\$5.3~~14.9 million for Class A, or such other sum as this Court finds appropriate at the trial of the common issues or at a reference or references;
- (j) Common law secondary market damages in the sum of \$24.7 million for Class B, or such other sum as this Court finds appropriate at the trial of the common issues or at a reference or references;
- (k) 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;
- (l) Prejudgment and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *CJA*;
- (m) Costs of this action on a full indemnity scale, or in an amount that provides substantial indemnity, plus, pursuant to s. 26(9) of the *CPA*, the costs of administering the plan of distribution of the recovery in this action; and

- (n) Such further and other relief as this Honourable Court deems just.

NATURE OF THIS ACTION

3. NAP is a mining exploration and production company based in Toronto, Ontario, which at all relevant times was publicly traded. NAP operates the LDI palladium mine, located northwest of Thunder Bay, Ontario.

4. NAP is an *OSA* responsible issuer, and pursuant to Part XVIII of the *OSA*, NAP was obligated to provide continuous disclosure about its affairs, including management's discussion and analysis, to investors. ~~Prior to July 30, 2014, NAP included a "Going Concern Warning" within its core documents released on SEDAR.~~

5. Despite NAP's deteriorating financials' situation, as of July 30, 2014, the Corporate ~~Defendants~~Defendant released the Company's Core Documents but omitted the material facts that:

(a) ~~the Going Concern Warning from NAP's Q2 through Q4 2014 Core Documents; the dispute with BCP over the application of the debt covenants within the Loan Agreement;~~

(b) commencing October 2014, the EBITDA Ratio within the Loan Agreement became increasingly difficult with which for NAP to comply and, thus exposed the Classes to an event of default;

(c) ~~by before the release of NAP's 3Q 2014 MD&A, NAP's Board of Directors were discussing the idea of restructuring or raising capital at dilutive or expensive terms because NAP did not have the capital to develop Phase II of its mine expansion;~~

(e)(d) ~~before~~ January 15, 2015, ~~NAP~~NAP's Board of Directors had already hired CIBC as its financial advisor to renegotiate the Loan Agreement, identify refinancing alternatives, sell the Company, or represent it in the Recapitalization (and Plan of Arrangement); and

(d) ~~KPMG negligently or intentionally omitted to disclose the adverse material facts identified in sub-paragraphs (a) through (c) in the February 19, 2015 Independent Auditor's Report included within NAP's audited annual financial statement.~~

6. Moreover, NAP failed to release a Material Change Report within ten days of NAP's Board of Directors deciding to hire (an) investment bank(s) to assist with its financial concerns arising from the Loan Agreement as alleged herein.

7. On April 15, 2015, NAP released a Material Change Report and corresponding news release announcing the Recapitalization of the Loan Agreement and Plan of Arrangement for the Company. The statements released therein as well as subsequently-released statements publicly corrected NAP's statements released on July 30, 2014, November 5, 2014, February 19, 2015, and March 30, 2015. This public correction resulted in NAP's share price diminishing by over 90%.

8. The Plaintiffs assert the following causes of action for damages against the Corporate Defendants and KPMG Defendant:

- (a) Corporate ~~Defendants~~ Defendant: A statutory claim for secondary market misrepresentation pursuant to Part XXIII.1 of the *OSA* relating to the Corporate Defendants' Defendant's statements ~~dated~~ released between July 30, 2014, November 5, 2014, February 19, 2015, and March 31, 2015 (i.e., Class A); and
- (b) Corporate ~~Defendants~~ Defendant: A common law oppression claim, for secondary market misrepresentation on behalf of those Class Members who purchased shares of NAP between June 17, 2013 and July 29, 2014, and held all or some of those shares until after the close of trading on April 14, 2015 (i.e. Class B); and
- (c) ~~KPMG: A statutory claim for secondary market misrepresentation pursuant to Part XXIII.1 of the OSA relating to KPMG's statement released within NAP's 2014 audited annual financial statements released on February 19, 2015.~~

THE PLAINTIFFS

9. Craig Johnson resides in Thunder Bay, Ontario. On November 20, 2014 and November 28, 2014, Johnson purchased 1,948 and 1,400 shares of NAP, respectively, held all of those shares until after April 14, 2015, and suffered an economic loss. He seeks to be appointed as the representative of Class A.

10. Wolfgang Vaeth is an individual who resides in the Town of Holzkirchen in Germany. During Class Period B, he purchased over 100,000 NAP securities and realized a loss by holding those securities until after April 14, 2015. He relied upon NAP's Core Documents dated July 30, 2014, November 5, 2014, and February 19, 2015, in making a decision not to sell his shares of NAP. He seeks to be appointed as the representative of Class B.

THE DEFENDANTS

11. NAP is incorporated pursuant to the federal laws of Canada and has its principal office in the City of Toronto, Ontario. It is engaged in the exploration and development of mining properties in Ontario.

12. LDI is NAP's flagship mine and, according to NAP, is one of the world's two primary palladium producers. It is located northwest of Thunder Bay, Ontario. NAP started producing palladium at LDI in 1993, suspended operations in October 2008, and restarted palladium production in March 2010.

13. The shares of NAP were listed for trading on the TSX and the NYSE MKT under the symbol "PDL" and "PAL," respectively. NAP is assigned the CUSIP number 65704X and ISIN number CA65704X1096. NAP is also listed for trading on other alternate trading systems including, but not limited to, Alpha ATS, Pure Trading and Omega ATS as well as on the Frankfurt Stock Exchange.

14. During the Class Periods, NAP was a “responsible issuer” as defined in s. 138.1 of the *OSA* and the comparable provisions in the Equivalent Securities Acts.

15. At the relevant time, NAP was a reporting issuer in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and was therefore subject to the continuous disclosure obligations in the *OSA* and the Equivalent Securities Acts. In connection with its continuous disclosure obligations, NAP released Core Documents on SEDAR.

16. Pursuant to NI 51-102, as a reporting issuer in Ontario, NAP was required throughout Class Period A to, *inter alia*, issue and file on SEDAR:

- (a) within 10 days of the date on which a material change occurred, a material change report on Form 51-102F3 with respect to the material change and a press release forthwith;
- (b) within 45 days of the end of each quarter, quarterly interim financial statements containing all of the material facts that arose during the quarter;
- (c) within 90 days of the end of the fiscal year, annual financial statements;
- (d) contemporaneously with each of the above, a management discussion and analysis of each of the above financial statements; and
- (e) within 90 days of the end of its 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 future operations.

17. At all material times, du Toit, a resident of Ontario, was the President and Chief Executive Officer of NAP and a member of its Board of Directors. ~~Defendant du Toit made written and oral misrepresentations to investors during the Class Periods, as particularized herein.~~

18. At all material times, Langille, a resident of Ontario, was the Chief Financial Officer of NAP. ~~He made written and oral misrepresentations to investors during the Class Periods, as particularized herein.~~

~~19. KPMG is a public accounting firm with offices in Toronto, Ontario, and across Canada. KPMG is an expert within the meaning of s. 138.1 of the OSA.~~

THE FOUNDATION AND MATERIAL EVENTS

~~20.~~19. On June 7, 2013, NAP entered into the Loan Agreement. For purposes of this action, the relevant sections of the Loan Agreement are 6.2.1: Senior Debt to EBITDA Ratio, 6.2.2: Minimum EBITDA, 6.2.3: Minimum Equity, and Article 8: Events of Default and Remedies (“Debt Covenants”).

~~21.~~20. On June 17, 2013, NAP published a Material Change Report on SEDAR in order to properly inform the investing public of the materiality of the Loan Agreement given its effect on NAP’s operations and capital structure. The EBITDA Ratio and market capitalization requirements within the Loan Agreement were material facts and, accordingly, NAP disclosed these terms of the loan at this time: October 2014, 12:1; November 2014, 10:1; December 2014, 9:1; January 2015, 8:1; February 2015, 7:1; March-April 2015, 6:1; May-July 2015, 5:1; and July-Maturity Date, 4:1.

~~22. On May 1, Commencing 1Q or 2Q 2014, NAP and BCP commenced a dispute over the Corporate Defendants’ released interpretation of the Debt Covenants and application of NAP’s Q4 ability to revert to cash interest payments.~~

22. By June 2014 financial results, NAP’s dispute with BCP continued and increased in which they inserted a Going Concern Warning, intensity.

23. NAP relied upon its business judgment that BCP would still agree to amend the terms of the Loan Agreement based upon prior history.

23-24. On July 30, 2014, the Corporate Defendants Defendant released NAP's Q2 2014 financial results and MD&A but omitted (a) the ~~Going Concern Warning despite worsening financial conditions, or, in the alternative, omitted to disclose the reasons why the Going Concern Warning~~ relationship between it and BCP was dropped ~~deteriorating because of a disagreement over the application of the debt covenants within the Loan Agreement~~; and (b) that commencing October 1, 2014, the EBITDA Ratio requirements within the Loan Agreement would materially change, making it more difficult for NAP to avoid being in default.

24-25. On October 30, 2014, NAP amended its Loan Agreement to reduce the financial burden of the EBITDA Ratio requirements because it knew it would breach the requirement by mid-2015. Nevertheless, NAP omitted this material fact from its Q3 2014 financial results and MD&A.

25-26. On November 5, 2014, the Corporate Defendants Defendant released NAP's Q3 2014 financial results and MD&A but continued to omit the material facts identified in the prior ~~paragraph~~ paragraphs (i.e., now the EBITDA Ratio was reduced from 12:1 to 10:1). Furthermore, the Corporate Defendants Defendant omitted that they recognized that NAP's mine-expansion and new infrastructure did not yield the anticipated efficiencies within the timeframe that was expected which lead to higher costs to NAP, that it had cost overruns with its exploration projects to extend the mine life, and that the Board was or had scheduled to discuss strategic alternatives to maintain ongoing operations, including raising capital on both dilutive and/or expensive terms with the help of outside investment bankers.

26-27. For each quarter of 2014, NAP was unable to run profitable operations. By year-end 2014, NAP only held \$4.1 million in cash.

~~27:28.~~ By mid-Before January 2015 (i.e., when the EBITDA Ratio within the Loan Agreement was further reduced from 10:1 to 8:1, and thus being in default status), the Corporate ~~Defendants~~Defendant had already retained CIBC to act as NAP's financial advisor in connection with a strategic review process to consider refinancing alternatives, renegotiate the Loan Agreement, Recapitalize, and/or to solicit interest in a sale of NAP.

~~28:29.~~ Thereon after, NAP's financial condition and future viability further deteriorated, but its Core Documents released February 19, 2015 and March 30, 2015 omitted these adverse material facts.

THE MISREPRESENTATIONS: THE IMPUGNED DOCUMENTS

~~29:30.~~ On **July 30, 2014**, NAP released its Q2 2014 financial statements and MD&A. This MD&A, which is a Core Document, omitted the following material facts: (a) ~~a Going Concern Warning despite worsening financial conditions, or, in the alternative, omitted the reasons why the Going Concern Warning was dropped;~~ and (b) that commencing October 1, 2014, the EBITDA Ratio requirements within the Loan Agreement were materially changing to 12:1 (October 2014), 10:1 (November 2014), and 9:1 (December 2014), making it more difficult for NAP to avoid being in default; and (b) Commencing 1Q or 2Q 2014, NAP and BCP commenced a dispute over the interpretation of the Debt Covenants and application of NAP's ability to revert to cash interest payments.

~~30:31.~~ ~~Individual Defendants~~Individuals du Toit and Langille, signed a Form 52—109F2, representing that based upon their knowledge, having exercised reasonable diligence, the interim filings did not contain any untrue statement of 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, with respect to the period covered by the interim filings.

~~31.32.~~ On **November 5, 2014**, NAP released its ~~Q#Q3~~ 2014 financial statements and MD&A. This MD&A, which is a Core Document, omitted the following material facts: (a) its mine-expansion and new infrastructure did not yield the anticipated efficiencies within the timeframe that was expected, which lead to higher costs to NAP and that it had cost overruns with its exploration projects to extend the mine life; (b) ~~a Going Concern Warning despite worsening financial conditions, or, in the alternative, omitted the reasons why the Going Concern Warning was dropped;~~ and (c) ~~that the EBITDA Ratio requirements within the Loan Agreement were materially changing from 10:1 (November 2014) to 9:1 (December 2014), 8:1 (January 2015), and 7:1 (February 2015), making it more difficult for NAP to avoid being in default; and (c) certain of~~ NAP directors and officers decided that because NAP did not have the capital that would need to restructure to attract new investors to finance the build-out of its mine.

~~32.33.~~ ~~Individual Defendants~~Individuals du Toit and Langille, signed a Form 52—109F2, representing that based upon their knowledge, having exercised reasonable diligence, the interim filings did not contain any untrue statement of 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, with respect to the period covered by the interim filings.

~~33.34.~~ On **February 19, 2015**, NAP released its 2014 audited annual financial statements and MD&A. This MD&A, which is a Core Document, omitted the following material facts: (a) its mine-expansion and new infrastructure did not yield the anticipated efficiencies within the timeframe that was expected, which lead to higher costs to NAP, that it had cost overruns with its exploration projects to extend the mine life, and that CIBC has been retained to act as its financial advisor in connection with the strategic review process, including negotiating the Loan Agreement; (b) ~~a Going Concern Warning despite worsening financial conditions, or, in the alternative, omitted~~

~~the reasons why the Going Concern Warning was dropped; and (c) and restructuring;~~ (b) that the EBITDA Ratio requirements within the Loan Agreement were materially changing from 7:1 (February 2015) to 6:1 (March-April 2015) and 5:1 (May-July 2015) , making it more difficult for NAP to avoid being in default.

~~34.35. Individual Defendants~~Individuals du Toit and Langille, signed a Form 52—109F2, representing that based upon their knowledge, having exercised reasonable diligence, the interim filings did not contain any untrue statement of 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, with respect to the period covered by the interim filings.

~~35. — KPMG negligently relied upon inaccurate financial information from NAP. KPMG also negligently or intentionally failed to obtain all the material facts and material change information from NAP's management. KPMG's failures resulted in it omitting to disclose these adverse material facts in its independent auditor's report.~~

36. On February 26, 2015, NAP published a press release entitled “North American Palladium Releases a Positive Preliminary Economic Assessment for its Lac des Iles Mine. PEA Demonstrates Potential for Major Open Pit Expansion and Mine Life Extension.” ~~Individual Defendant~~ du Toit was quoted as saying, “The strong rate of return for the Base Case plan, a mine of life of approximately 15 years and a NPV [net present value] of almost \$600 million is a very positive development for the Company.” The press release further stated that: (a) “The strong palladium market is supported primarily by a robust global automotive industry that is anticipated to continue its growth profile for years to come”; and (b) “Low Risk Relative to Other PGM Expansion Projects”. However, the press release omitted to disclose that NAP was in breach of the

financial covenants, had already engaged CIBC to engage in a material change, and its probable default and Recapitalization.

37. On **March 31, 2015**, NAP released its 2014 AIF. This Core Document omitted all the material facts and material change as in the Core Document released on February 19, 2015, and, furthermore, it misrepresented that NAP became aware of potential violations of sections to the Loan Agreement. At this time NAP was in violation of sections of the Loan Agreement.

~~38. — Individual Defendants du Toit and Langille, signed a Form 52 — 109F2, representing that based upon their knowledge, having exercised reasonable diligence, the interim filings did not contain any untrue statement of 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, with respect to the period covered by the interim filings.~~

THE CORRECTIVE DISCLOSURE

~~39.~~38. On April 15, 2015, NAP released a Material Change Report and corresponding news release announcing that it was forced to enter into a Waiver and Third Amendment to the Loan Agreement with BCP, which was published on SEDAR on April 20, 2015.

~~40.~~39. This statement reads that NAP advised ~~the lender~~BCP that it expected to be in default of sections 6.2.1 and 6.2.3 as of March 31, 2015.

~~41.~~40. On June 30, 2015, NAP released documents on SEDAR and used in a Commercial List proceeding containing statements from CIBC. In this document, CIBC made statements confirming that during 2014, NAP faced material adverse financial events, e.g., allocating significant capital to various projects that did not yield the anticipated efficiencies within the timeframe resulting in higher costs, costs overruns for exploration expenses and the EBITDA Ratio requirements within the Loan Agreement. As a result, prior to January 2015, NAP determined that

it would consider strategic alternatives, and by January 15, 2015, NAP and CIBC had negotiated and entered into a retainer agreement.

42.41. Immediately after the Corrective Disclosure was communicated to the market, the investment quality and price of NAP's securities materially collapsed resulting in damages to the Plaintiffs.

NO STATUTORY DEFENCE FOR FORWARD-LOOKING INFORMATION

43.42. To the extent that any of the disclosure documents or public statements addressed in this Amended Second Fresh as Amended Statement of Claim contained forward-looking information, some of those forward-looking statements constituted misrepresentations because the Corporate ~~Defendants~~ Defendant had no reasonable basis for the underlying assumptions on which this forward-looking information was based for the reasons particularized above.

44.43. Further or in the alternative, to the extent that the statutory defences in sections 132.1 and 138.4 of the *OSA* do apply to any forward-looking statements pleaded herein, the ~~Defendants~~ Defendant is liable for those forward-looking statements containing the alleged misrepresentations because, at the time each of those forward-looking statements was made, the ~~Defendants~~ Defendant knew or should have known that the particular forward-looking statements contained within the relevant MD&A and financial statements were misrepresentations for the reasons alleged herein.

THE CAUSES OF ACTION ASSERTED BY THE ~~PLAINTIFF~~ PLAINTIFFS AND CLASS

45.44. Johnson asserts, in his personal capacity and on behalf of Class A, secondary market statutory causes of action contained in sections 138.3(1)(a)–(e), 138.3(2)(a)–(e), and 138.3(4)(a) of the *OSA* and the Equivalent Securities Acts.

46.45. Vaeth asserts, in his personal capacity and on behalf of Class B, a secondary market common law oppression cause of action of negligent misrepresentation. Specifically, he asserts, in his personal capacity and on behalf of Class B, that had the Corporate ~~Defendants~~Defendant not released Core Documents containing misrepresentations, he would have known all the material facts about NAP's business, operations, and finances, and, as a result, he would have made a decision to sell his NAP securities on or soon after the release of the first Core Document released on SEDAR containing the alleged Misrepresentation.

THE RELATIONSHIP BETWEEN THE MISREPRESENTATIONS AND THE PRICE AND VALUE OF NORTH AMERICAN PALLADIUM'S SECURITIES

47.46. The price and value of NAP's securities were directly affected each time that the Corporate ~~Defendants~~Defendant disclosed material changes and material facts about NAP's business, finances, and operations, including NAP's acquisitions, accounting policies, revenue recognition policies, future revenue prospects, revenue growth percentages, compensation of insiders and management, and the number of NAP's issued and outstanding shares.

48.47. The Corporate ~~Defendants and KPMG~~Defendant were aware at all material times of the effect of NAP's disclosures about its business, finances, and operations, including NAP's accounting policies, revenue recognition policies, future revenue prospects, revenue growth percentages, compensation of insiders and management, and the number of NAP's issued and outstanding shares, on the price of the Company's publicly traded securities.

49. ~~The Corporate Defendants removed the Going Concern Warning from NAP's Q2 through Q4 2014 Core Documents because the Company's senior management believed it had a detrimental adverse effect on NAP's share price.~~

~~50. IFRS requires disclosure of the Going Concern Warning when it applies, as it did in NAP's Q2 through Q4 2014 Core Documents. IFRS does not contemplate whether a Going Concern Warning is material or not; the Going Concern Warning must be disclosed.~~

~~51. The Corporate Defendants and KPMG intended that the Class Members, including the Plaintiffs, would rely upon these disclosures, which impacted the price of the securities.~~

~~52.~~48. ~~The Core~~The Core and non-core Documents referred to herein were filed with SEDAR and thereby became immediately available to and were reproduced for inspection for the benefit of the Plaintiffs and the other Class Members, the public, financial analysts and the financial press through the Internet and financial publications.

~~53.~~49. NAP routinely transmitted the documents referred to herein to the financial press, financial analysts and certain prospective and existing shareholders of the Company.

~~54.~~50. NAP regularly communicated with public investors and financial analysts via established market communication mechanisms, including through regular dissemination of news releases on newswire services and through teleconferences with investors and analysts.

~~55.~~51. NAP was the subject of analysts' reports that incorporated the information in the disclosure documents referred to herein, with the effect that any recommendation in such reports during the Class Periods were based, in whole or in part, upon the news releases, interim and annual filings, and statements made during the investor conference calls, which contained misrepresentations.

~~56.~~52. During the Class Periods, NAP's securities were traded on the TSX (and other alternative trading platforms in Germany and the United States), which is a highly efficient and automated market.

THE VICARIOUS LIABILITY OF NORTH AMERICAN PALLADIUM LTD

~~57.53.~~ The acts particularized and alleged in this Second Fresh as Amended Statement of Claim to have been done by NAP were authorized, ordered and done by the ~~Individual Defendants as well as other~~ its directors and officers, agents, employees and representatives who were engaged in the management, direction, control and transaction of NAP's business, finances, and operations and are, therefore, acts and omissions for which NAP is vicariously liable.

STATUTORY SECONDARY MARKET LIABILITY – PART XXIII.1 OF THE OSA

~~58.54.~~ Plaintiff Johnson will seek leave under s. 138.8(1) of the OSA to assert the causes of action set out in Part XXIII.1 of the OSA against the Corporate ~~Defendants and KPMG~~ Defendant.

~~55.~~ As a result of the conduct of the Corporate ~~Defendants~~ Defendant as alleged, Johnson and the members of Class A suffered losses and damages as a result of acquiring NAP's securities at artificially inflated prices on or after July 30, 2014, and holding some or all of those securities after the close of trading on April 14, 2015. Therefore, the Corporate ~~Defendants and KPMG~~ Defendant are liable to pay damages pursuant to ss. 138.1, and 138.5, and ~~138.7(2)~~ of the OSA, to Plaintiff Johnson and to the members of Class A in the amount of \$~~5.3~~ 14.9 million.

COMMON LAW SECONDARY MARKET LIABILITY THE CORPORATE DEFENDANTS

~~59.56.~~ Pursuant to common law and section 75 of the OSA, the Corporate ~~Defendants~~ Defendant had a duty to provide continuous disclosure statements about NAP's business, operations, and financial situation.

~~60.57.~~ Defendant NAP, ~~and the Individual Defendants,~~ owed a duty of care to Plaintiffs Vaeth and the members of the Class B because it was reasonably foreseeable that they would rely on the certification forms annexed to the Company's MD&A and annual audited financial statement and

could suffer economic damages if the MD&A or annual audited financial statement contained misrepresentations. These duties of care created a special relationship between the Corporate ~~Defendants~~Defendant, and the Plaintiffs and members of Class B.

~~61-58.~~ The Corporate ~~Defendants~~Defendant had a duty to disseminate complete and accurate information and to make prompt corrections to previously issued, materially inaccurate information to ensure that their Core and non-Core Documents contained accurate and complete information about the probability of the contingent liability of breaching the Loan Agreement's financial covenant sections 6.2.1 and 6.2.3 ~~as well as communicate the risk of NAP's potential failure to continue operations by inserting a Going Concern Warning in their Core Documents.~~

~~62-59.~~ The Corporate ~~Defendants~~Defendant failed to meet the reasonable standard of care expected in the circumstances because:

- (a) they made the statements about NAP's investment quality, which were untrue, inaccurate, materially false and misleading when made;
- (b) they failed to act reasonably, honestly, candidly and in the best interests of the Plaintiffs and the Class Members;
- (c) they failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- (d) they made or authorized the making and release of the Core Documents alleged to contain the misrepresentations;
- (e) they failed to give the members of the Classes current and continuing accurate information about NAP's financial condition and the probability of breach of the financial covenant sections 6.2.1 and 6.2.3, default with Recapitalization negotiations with Brookfield; and

~~(f) — they knew, or ought to have known, that the probability of NAP not being able to continue as a going concern and the contingent liability of breaching the Loan Agreement's financial covenant sections 6.2.1 and 6.2.3 was probable, and that their statements released within NAP's Core Documents on July 30, 2014, November 5, 2014, and February 19, 2015 in that regard, were inaccurate, untrue and misleading; and~~

~~(g)(f)~~ they knew, or ought to have known, that the Classes would reasonably rely on NAP's core documents dated July 30, 2014, November 5, 2014, and February 19, 2015, in making the decision to hold their shares of NAP without knowing the full scope of the risks of NAP.

~~63.60.~~ The Corporate ~~Defendants~~Defendant knew or should have known that by failing to disclose its true financial condition and the concerns about the then pending adjustment of the financial covenants within the Loan Agreement, disputing with BCP over the interpretation and application of the debt covenants, hiring CIBC to assist with Restructuring transaction, and the imminent default it would cause, they would render the MD&A misleading because a reasonable investor would interpret the absence of such disclosures as implying the nonexistence of a pending material change about NAP's business, operations and capital or financial structure.

~~64.61.~~ The Corporate ~~Defendants'~~Defendant's negligence for failing to make proper disclosures on July 30, 2014, November 5, 2014, and February 19, 2015, caused damage to the members of Class B because those Class members continued to hold shares of NAP and suffered damages when NAP announced that it was in breach of the Loan Agreement's financial covenant sections 6.2.1 and 6.2.3 and the Recapitalization transaction on April 15, 2015.

~~65.62.~~ As a result of the conduct of the Corporate ~~Defendants~~Defendant as alleged, Vaeth and the members of Class B suffered losses and damages as a result of acquiring NAP's securities prior to July 30, 2014, and, through relying on the Corporate ~~Defendants'~~Defendant's negligent misrepresentations, holding some or all of those securities after the close of trade on April 14, 2015. The reliance was reasonable.

~~66.63.~~ Therefore, the Corporate ~~Defendants are~~Defendant is liable to pay damages, pursuant to the common law, to Vaeth and to the members of Class B in the amount of \$24.7 million plus in accordance with the *CPA*, the costs of administering the plan to distribute the recovery in this action.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

~~67.64.~~ This action has a real and substantial connection with Ontario.

RELEVANT LEGISLATION

~~68.65.~~ The Plaintiffs plead and rely upon the *CJA*, the *CPA*, NI 51-102, NI 52-109, the *OSA*, and the Equivalent Securities Acts.

~~February 28~~December 18, 2020

MARCH 14, 2016 - M-✓

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JOHNSON AND VAETH

v.

**NORTH AMERICAN PALLADIUM,
LTD., et al.**

Plaintiffs

Defendants

**NORTH AMERICAN PALLADIUM,
LTD.-et al.**
Defendants

PROCEEDINGS COMMENCED AT TORONTO

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