

SETTLEMENT AGREEMENT

This Settlement Agreement (the “**Settlement Agreement**”) is dated for reference June 4, 2024, by and between:

- (a) The plaintiffs, Michael Tietz, Duane Loewen, Robin Lee, Mike Dotto, Grant Greenwood, Malcom Runkee, Americo Morlani, Greg Lomnes and Stacey Dionne (the “**Plaintiffs**”), in the putative class proceeding, British Columbia Supreme Court Action No. S197731, Vancouver (the “**Action**”) on behalf of the “**Class**” as defined below, (the “**Class**”); and
 - (b) Peakbircb Commerce Inc., formerly Peakbircb Logic Inc., and formerly Kootenay Zinc Corp. (“**Kootenay**”), Robert James Tindall (“**Tindall**”), and Von Rowell Torres (“**Torres**”), defendants in the Action (collectively the “**Settling Defendants**”),
- (collectively, the “**Parties**”).

I. RECITALS

WHEREAS:

- A. the Plaintiffs have commenced the Action which alleges that the defendants in the Action (the “**Defendants**”), including the Settling Defendants in their capacities as Issuer, and Issuer Officers and Directors, as defined in the Further Amended Notice of Civil Claim filed February 23, 2023 (the “**FANCC**”), participated in a scheme where certain of the Defendants, referred to in the FANCC as the “**Purported Consultants**”, acquired shares in certain of the Defendants, referred to in the FANCC as the “**Issuers**”, which Issuers include Kootenay, in 2018 through false pretense and by deception upon the public market, resulting in loss and damage to the Plaintiffs and others like them who acquired shares in the Issuers subsequent to the alleged deception;
- B. it is alleged in the FANCC that the Settling Defendants are liable for statutory damages for secondary market misrepresentation pursuant to s. 140.3 and s. 140.5 of the *Securities Act*, RSBC 1996, c. 418, and for common law misrepresentation, and that Kootenay is liable for damages for unlawful conspiracy and that Tindall and Torres, as Issuer Officers and

Directors, are personally liable for any damages for unlawful conspiracy awarded against Kootenay.

- C. Kootenay denies that the alleged misrepresentations were made and if they were made that they were material. Tindall relies on the defences advanced by Kootenay as well as defences that originate from the fact that he only became a director of Kootenay days before most of the alleged misrepresentations were made.
- D. the Defendants, Tindall and Torres were officers and/or directors of Kootenay during part of the relevant time period, and the non-party, David Schmidt (“Schmidt”), was also an officer and director of Kootenay during part of the relevant time period;
- E. the Defendant, Anthony Jackson (“Jackson”) was also an officer and director during the relevant time period, but is not a party to this Settlement Agreement, which does not and shall not be construed to apply in any way to claims made against Jackson in the Action, and for greater clarity but without limiting the generality of the foregoing, any reference in this Settlement Agreement to “the former officers, directors, managers, employees, and insurers of Kootenay” shall not be construed to include Jackson or any of his companies, including the Defendants, BridgeMark Financial Corp. and Jackson & Company Professional Corporation;
- F. the Plaintiff, Robin Lee, by Order made November 22, 2021 in Supreme Court of British Columbia File No S202110, was granted leave under s. 140.8 of the *Securities Act* to bring the claims in the Action under s. 140.3 of the *Securities Act* for secondary market disclosure liability against the Settling Defendants. To date, no substantive steps have been taken in respect of any of the claims made by the Plaintiffs, as the settlement in principle which resulted in this Settlement Agreement was reached in the days before the Plaintiffs’ application to certify the claims against the Settling Defendant in relation to Kootenay was set for hearing;
- G. the Settling Defendants deny all of the allegations and claims for relief in the Action, and the Settling Defendants believe that they are not liable in respect of the claims made against them in the Action, and that they have good, reasonable, and complete defences in respect of both the certification of the Action as a class proceeding and the merits of the Action;

- H. the Parties, by way of this Settlement Agreement, desire to compromise and settle all claims made, and which could have been made, against the Settling Defendants in the Action;
- I. despite their belief that they have good, reasonable, and complete defences in respect of the certification of the Action as a class proceeding, and the merits of the Action, Kootenay and Tindall have negotiated and entered into this Settlement Agreement to avoid the further expense, inconvenience, and burden of the Action, and any other present or future litigation arising out of the facts that gave rise to the Action, and to achieve a full, final and nationwide resolution of all claims asserted or which could have been asserted against them on the basis of the same or similar events, actions and omissions, by the Plaintiffs, on their own behalf and/or on behalf of the Class they seek to represent, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy involving them, and Torres has entered into the Settlement Agreement to secure these same benefits with respect to the claims against him in the Action in his capacity as an officer and director of Kootenay;
- J. as part of this Settlement Agreement, in exchange for a full and final nation-wide release of all claims against Tindall, and all current and former officers, directors, managers, employees, and insurers of Kootenay, except Torres and Schmidt, a covenant not to sue Kootenay and its Affiliates (as defined below), and a covenant not to sue Torres and Schmidt in their capacities as former officers and directors of Kootenay, and a bar order in respect of all claims against the Settling Defendants, and the current and former officers, directors, managers, agents, subsidiaries, successors, employees, and insurers of Kootenay, except for any of the Purported Consultants and Unnamed Consultants as defined in the FANCC, and except that for Torres and Schmidt, the bar shall only extend to claims against them in their capacities as former officers and directors of Kootenay, the Settling Defendants have agreed to pay their respective Settlement Amounts (as defined below) for the benefit of the Class;
- K. as a result of the Action, the Parties are reasonably familiar with the factual and legal issues presented by their respective claims and defences in the Action, and recognize the uncertainties as to the ultimate outcome in the Action, and the likelihood that any final

result could require years of further complex litigation and substantial expense, including with respect to appeals and enforcement of any judgment that may ultimately be rendered;

- L. this Settlement Agreement was entered into after extensive arm's length negotiations between counsel for the Plaintiffs and the Class, and counsel for the Settling Defendants;
- M. the Parties and their counsel agree that the Settlement Agreement represents a fair, reasonable, and adequate resolution of the claims advanced, and which could have been advanced, against the Settling Defendants;
- N. the Parties desire and intend to seek court approval of this Settlement Agreement as set forth herein;
- O. the Settling Defendants do not admit through the execution of this Settlement Agreement or otherwise any of the allegations and claims made or which could have been made in the Action against them, including any alleged unlawful conduct.

NOW, THEREFORE, for value received, the Parties stipulate and agree, subject to Court approval, to the following.

II. DEFINITIONS

- 1. As used in the Settlement Agreement, including the Recitals and Schedules hereto, in addition to any definitions elsewhere in the Agreement, the following terms shall have the meanings set forth below:
 - (a) "**Affiliates**" means, in respect of any person, any other person or group of persons that, directly or indirectly through one or more intermediaries, control, are controlled by, or are under common control with, such person first mentioned, and for the purposes of this definition, "control" means the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting securities, by contract or otherwise, but, for the purposes of this Settlement Agreement, does not include the defendants Essos Corporate Services Inc. and Sway Capital Corp., or any other company owned controlled or directed by Torres or Schmidt.

- (b) “**Class**” means the Class as defined in paragraph 100 and 101 of the FANCC, excluding paragraph 100(j), and including within the definition of “Excluded Persons” in paragraph 101, any entities which are controlled by, or are under common control with, an individual Defendant, or any family member of either an individual Defendant or any individual person who falls within s. 101 (a) and (b) of the FANCC.
- (c) “**Class Counsel**” means the law firms of Bennett Mounteer LLP and Camp Fiorante Matthews Mogerman LLP;
- (d) “**Class Members**” means the members of the Class, including the Plaintiffs;
- (e) “**Court**” means the Supreme Court of British Columbia;
- (f) “**Effective Date of Settlement**” means the next calendar day after the day on which all appellate rights with respect to the Settlement Approval Order have expired or have been exhausted without the Settlement Approval Order having been modified, reversed or set aside on appeal, or such other date as may be agreed upon by all of the Parties in writing;
- (g) “**Non-Settling Defendants**” means the remaining Defendants in the Action or others who may be added as defendants in the Action at any time and includes the defendants Essos Inc. and Sway Corp., and the Unnamed Consultants, as those terms are defined in the FANCC;
- (h) “**Settlement**” means the settlement described in this Settlement Agreement;
- (i) “**Settlement Administration Plan**” means a plan setting out the terms of the administration of the Settlement in respect of funds received by Class Counsel under the Settlement for the benefit of the Class;
- (j) “**Settlement Amounts**” means the all-inclusive sum of three hundred thousand dollars in lawful Canadian currency (CAD \$300,000), to be paid on behalf of Kootenay and Tindall, and fifty thousand dollars in lawful Canadian currency (CAD \$50,000), to be paid on behalf of Torres;

- (k) **“Settlement Approval Hearing”** means the date the Court is scheduled to consider the Settlement Approval Order;
- (l) **“Settlement Approval Order”** means the order made by the Court in the Action approving the Settlement, which order shall be substantially in the form attached as Schedule “A”; and
- (m) **“Settlement Fund”** means a trust account held by Class Counsel which will hold the Settlement Amounts.

III. APPROVAL PROCESS

2. The Parties shall respectively take all reasonable steps to expeditiously effect this Settlement, and to secure the prompt dismissal of the Action against Tindall, and the discontinuance of the Action as against Kootenay and Torres, the latter in his capacity as an Issuer Officer and Director only, both to be without costs to any Party.
3. As soon as is reasonably practical following the execution of this Settlement Agreement, the Plaintiffs shall apply to the Court for the Settlement Approval Order, and the Settling Defendants shall cooperate in the Plaintiffs’ efforts to obtain the Settlement Approval Order from the Court and any further or other orders required from the Court to implement the Settlement Agreement.
4. Class Counsel may seek court approval of class counsel fees, disbursements and honouraria to the representative Plaintiffs either at or subsequent to the Settlement Approval Hearing but will not seek any further costs or disbursements to be payable by any of the Settling Defendants. The Settling Defendants will take no position on that approval application. Approval by the Court and/or the effect of this Settlement Agreement will not depend on the Court’s approval of Class counsel’s fees, disbursements or honouraria for the Plaintiffs.
5. If the Settlement Approval Order is not granted, or is inconsistent with the terms of the Settlement Agreement, or is reversed or modified on appeal, then, except for the circumstances described in paragraphs 8 and 9 below, or unless the Parties expressly agree otherwise in writing:

- (a) this Settlement Agreement and all orders made pursuant to it shall be null and void, shall have no further force and effect with respect to the Parties, and shall not be offered in evidence or used in any litigation for any purpose; and
- (b) all orders in existence as of the date on which this Settlement Agreement was executed shall become operative and fully effective, as if proceedings relating to this Settlement had not occurred. In such event, the Parties reserve all rights to object to or otherwise challenge all such pre-existing orders, including the right to make appropriate scheduling requests and seek extensions of any applicable deadlines (and the Parties agree to provide their consent to any such reasonable requests or extensions).

- 6. As soon as reasonably possible after the Effective Date of Settlement, and within no more than fifteen (15) days thereof, the Plaintiffs shall promptly discontinue the Action as against Kootenay and Torres, the latter in his capacity as an Issuer Officer and Director only.

IV. SETTLEMENT PAYMENT

- 7. At least 15 days prior to the Settlement Approval Hearing, which shall not be set until at least 60 days after all parties have executed this Settlement Agreement unless otherwise agreed to by all parties, the Settling Defendants will pay, or cause to be paid, their respective Settlement Amounts to Whitelaw Twining LLP, in trust, with irrevocable instructions to Whitelaw Twining LLP to:
 - (a) hold the Settlement Amounts in an interest-bearing trust account pending the Settlement Approval Order;
 - (b) if the Settlement is not approved in accordance with the terms of this Settlement Agreement, to continue to hold the Settlement Amounts or return the Settlement Amounts as instructed by the Settling Defendants; and
 - (c) if the Settlement is approved in accordance with the terms of this Settlement Agreement, to pay the Settlement Amounts and all accrued interest thereon, to Bennett Mounteer LLP in trust within 15 days after the Effective Date of

Settlement.

8. Upon receiving the Settlement Amounts, Class Counsel will deposit those monies into the Settlement Fund.
9. The Settling Defendants' monetary obligations under the Settlement and Action are limited to those set out in paragraph 7 above. For greater certainty, all expenses and costs of the Settlement and Action and any and all associated appeals, including, without limitation, Class Members' claims, legal fees, honouraria, administration expenses, disbursements, taxes, and notice costs, shall be paid out of the Settlement Amounts and the Settling Defendants shall have no further liability in respect of any these or any other expenses or costs.
10. The Settling Defendants shall have no legal or beneficial interest in the Settlement Fund.

V. WAIVER OF COSTS

11. Upon the Effective Date of Settlement, the Settling Defendants shall and do hereby waive any costs to which they may be entitled in respect of the Action or the application for leave in BCSC No. S202110 (the "**Leave Application**") and any appeals taken from that proceeding.
12. Upon the Effective Date of Settlement, the Plaintiffs, on their own behalf and on behalf of the Class they seek to represent, shall and do hereby waive any costs to which they may be entitled in respect of the Action or the Leave Application and any appeals taken from that proceeding

VI. RELEASE AND COVENANT NOT TO SUE

13. Upon the Effective Date of Settlement, the Plaintiffs and the Class Members forever release, relinquish and discharge Tindall, and all of the current and former officers, directors, managers, employees, and insurers of Kootenay, except Torres and Schmidt, from any and all claims, demands, actions, proceedings, suits, causes of action and manners of action of any and all kinds that have been brought or could have been brought, are currently pending or were pending, or are ever brought in the future, whether known or

unknown, asserted or unasserted, under or pursuant to any statute, regulation, common law or equity, arising from the claims made, or which could have been made in the Action, whether class, individual, or otherwise in nature, directly, indirectly, derivatively, or in any other capacity, and without limiting the generality of the foregoing, all claims relating to any and all of the proposed common and individual issues made, arising from or relating to the pleaded facts, or the facts which could have been pled, in the Action or the Leave Application.

14. Upon the Effective Date of Settlement, the Plaintiffs and the Class Members, covenant and agree that they will not bring, commence, prosecute or maintain, or cause or permit to be brought, commenced, prosecuted or maintained, or otherwise join, assist, aid or act in concert in any manner whatsoever, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or person, against Kootenay and its Affiliates, and against Torres and Schmidt in their capacities as former officers and directors of Kootenay, any claims, demands, actions, proceedings, suits, causes of action and manners of action that have been brought or could have been brought, are currently pending or were pending, or which could be brought in the future, whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation, common law or equity, whether civil, criminal, regulatory or otherwise, arising from or in any way relating to the pleaded facts, or the facts which could have been pled in the Action, including, without limitation, with respect to the Kootenay securities purchased or sold between January 30, 2018 and November 26, 2018.
15. The Parties expressly acknowledge and agree that the covenant set out in paragraph 14 above is not a Release, and shall not be construed to be a Release, and that the Plaintiffs, and the Class Members expressly reserve all rights of action, claims and demands they have against the remaining Defendants in the Action, including Essos Inc., and Sway Corp., or others concerning Kootenay, except that the Plaintiffs and the Class Members covenant, undertake and agree that they will not seek to recover in the Action, or by any other proceedings or means, any portion of the losses they claim, or could claim, in the Action which a court or other tribunal may attribute to Kootenay or its Affiliates, Tindall, and Torres and Schmidt in their capacities as former officers and directors of Kootenay, and

the Plaintiffs and the Class Members shall amend the FANCC as set out in the Settlement Approval Order.

VII. SETTLEMENT ADMINISTRATION

16. On or after the Settlement Approval Hearing, the Plaintiffs will apply to the Court for approval of the Settlement Administration Plan. The Settlement Administration Plan will set out:
 - (a) the form and procedure by which notice of the Settlement shall be provided to the Class Members, including notice of the legal fees and expenses paid or payable to Class Counsel and the procedure by which Class Members can opt-out of the Settlement;
 - (b) the procedure by which Class Members can claim an entitlement under the Settlement; and
 - (c) the procedure for the determination of eligible claims and the amount of those claims, and the subsequent payment of them.
17. The Court shall have complete discretion to either approve or amend the Settlement Administration Plan. The Settlement Administration Plan shall not form part of this Settlement Agreement and the approval and/or the effect of this Settlement Agreement shall not be contingent on either the approval of the Settlement Administration Plan or the presentation of the Settlement Administration Plan at the Settlement Approval Hearing.
18. The Settling Defendants shall not have standing to make submissions regarding the Settlement Administration Plan.
19. The Settlement Fund shall be disbursed in accordance with the Settlement Administration Plan or as otherwise directed by the Court.
20. In order to assist the Plaintiffs in the settlement administration, Kootenay shall deliver to Class Counsel, no later than 90 (ninety) business days after the Effective Date of Settlement, such lists as contain the names and mailing addresses of the non-objecting beneficial owners of Kootenay shares that were used for Kootenay's 2018 and 2019 Annual

General Meetings.

VIII. GENERAL

21. The recitals to this Settlement Agreement are true and accurate, and form part of this Settlement Agreement.
22. This Settlement Agreement and its attachments shall constitute the entire agreement of the Parties and shall not be subject to any change, modification, amendment or addition without the express written consent of counsel on behalf of all Parties to the Settlement Agreement. This Settlement Agreement supersedes and replaces all prior negotiations, discussions, communications and proposed agreements, whether written or oral and is the entire agreement between the Parties.
23. The division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement.
24. Words in the singular include the plural and vice-versa and words in one gender include all genders.
25. In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if the Parties mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement.
26. The Court shall retain continuing jurisdiction over the Parties and over the administration and enforcement of the Settlement and the benefits to the Plaintiffs and the Class Members hereunder.
27. Any disputes or controversies arising with respect to the interpretation, enforcement, or implementation of this Settlement Agreement must be made by application to the Court.

28. Class Counsel warrants that they are fully authorized to execute this Settlement Agreement on behalf of the Plaintiffs and the Class Members and to execute and legally bind the Plaintiffs and the Class Members to this Settlement Agreement.
29. Whitelaw Twining LLP warrants that it is fully authorized to execute this Settlement Agreement on behalf of Kootenay and Tindall.
30. MLT Aikins LLP warrants that it is fully authorized to execute this Settlement Agreement on behalf of Torres.
31. This Settlement Agreement may be executed in counterparts by the Parties or their representatives, and a facsimile or electronically transmitted signature shall be deemed an original signature for purposes of this Settlement Agreement and of equally binding force and effect.
32. This Settlement Agreement shall be construed under and governed by the laws of the Province of British Columbia.
33. The Parties have negotiated and fully reviewed the terms of this Settlement Agreement, and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction of this Settlement Agreement by a court of law or any other adjudicating body.
34. The Agreement, including any addendums thereto, is for settlement purposes only, and conditional upon the making of the Settlement Approval Order, and neither the fact of, nor any provision contained in, this Settlement Agreement nor any action taken hereunder shall constitute, or be construed as, any admission of the validity of any claim or any factual allegation that was or could have been made by the Plaintiffs and the Class Members in the Action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Settling Defendants in their capacities as Issuer, and Issuer Directors and Officers, or any of the current and former officers, directors, managers, employees, and insurers of Kootenay. The Settling Defendants expressly deny any and all allegations of wrongdoing, fault, violation of law and liability. This Settlement Agreement, including any addendums thereto, shall not be offered or be admissible in evidence by or against the Settling

Defendants or any of the current and former officers, directors, managers, employees, and insurers of Kootenay, or cited or referred to in any other action, investigation or proceeding, except (1) in any action or proceeding brought by or against the Parties to enforce or otherwise implement the terms of this Agreement, or (2) in any action involving the Plaintiffs and the Class Members, or any of them, to support a defence of *res judicata*, estoppel, release, or other theory of claim preclusion, issue preclusion, or similar defence.

35. Any press release or public statements made to the media by the Plaintiffs or Class Counsel about the Settlement shall be in a form agreed upon by the Parties, acting reasonably. The Parties agree that any such press release or public statements shall be consistent with the terms of the Settlement Agreement, including that the Settlement has been negotiated and agreed to without any admissions or findings of liability or wrongdoing, and without any admissions or conclusions as to the truth of any of the matters alleged in the Action, with all such allegations being expressly denied by the Settling Defendants.
36. The Settling Defendants shall be entitled to issue a press release or public statements about this Settlement upon the execution of the Settlement Agreement without the approval of the Plaintiffs, provided however that the Settling Defendants agree and undertake to make no statement or comment that the Settlement is other than fair and reasonable, unless required to do so by law.
37. Whenever, under the terms of this Settlement Agreement, a person is required to provide service or written notice to the Plaintiffs, Class Members, Class Counsel or the Settling Defendants, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other Parties in writing:

As to the Plaintiffs, the Class Members and Class Counsel:

Paul R. Bennett
 Bennett Mounter LLP
 400 – 856 Homer Street
 Vancouver, BC V6B 2W5
 E-mail: pb@hbmlaw.com

As to Kootenay and Tindall:


Patrick Sullivan
Whitelaw Twining LLP
2400 - 200 Granville Street
Vancouver, BC V6C 1S4
E-mail: psullivan@wt.ca

As to Torres:

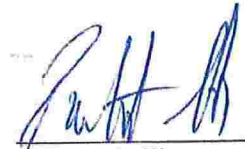
Dale Lysak
MLT Aikins LLP
2600 1066 West Hastings Street
Vancouver, BC V6E 3X1
Email: DLysak@mltaikins.com

IN WITNESS THEREOF, the Parties hereto have executed this Settlement Agreement as follows:


Date: June 04/2024

By: 
Paul R. Bennett as Class Counsel
on behalf of the Plaintiffs and the Class
Members

Date: June 17, 2024

By: 
Patrick Sullivan on behalf of Kootenay and
Tindall

Date: June 24, 2024

By: 
Dale Lysak on behalf of Torres

SCHEDULE "A"

No. S-197731
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

MICHAEL TIETZ, DUANE LOEWEN, ROBIN LEE, MIKE DOTTO,
GRANT GREENWOOD, MALCOLM RUNKEE, AMERICO MORLANI,
GREG LOMNES AND STACEY DIONNE

PLAINTIFFS

and

BRIDGEMARK FINANCIAL CORP., JACKSON & COMPANY PROFESSIONAL CORP., ANTHONY JACKSON, LUKOR CAPITAL CORP., JUSTIN EDGAR LIU, ROCKSHORE ADVISORS LTD. (FORMERLY KNOWN AS CAM PADDOCK ENTERPRISES INC.), CAMERON ROBERT PADDOCK, SIMRAN SINGH GILL, JCN CAPITAL CORP., JOHN BEVILACQUA, ESSOS CORPORATE SERVICES INC., SWAY CAPITAL CORP., VON ROWELL TORRES, DETONA CAPITAL CORP., DANILEN VILLANUEVA, NATASHA JON EMAMI, ALTITUDE MARKETING CORP., RYAN PETER VENIER, PLATINUM CAPITAL CORP., 658111 B.C. LTD., JASON CHRISTOPHER SHULL, TRYTON FINANCIAL CORP., ABEIR HADDAD, TAVISTOCK CAPITAL CORP., ROBERT JOHN LAWRENCE, JARMAN CAPITAL INC., SCOTT JASON JARMAN, NORTHWEST MARKETING AND MANAGEMENT INC., RUFIZA ESMail, DENISE TRAINOR, ALY BABU MAWJI, ESCHER INVEST SA, HUNTON ADVISORY LTD., RANDY WHITE, KENDL CAPITAL LIMITED, 1153307 B.C. LTD., RUSSELL GRANT VAN SKIVER, BERTHO HOLDINGS LTD., ROBERT WILLIAM BOSWELL, HAIGHT-ASHBURY MEDIA CONSULTANTS LTD., ASHKAN SHAHROKHI, SAIYA CAPITAL CORPORATION, TARA HADDAD, KEIR PAUL MACPHERSON, TOLLSTAM & COMPANY CHARTERED ACCOUNTANTS, ALBERT KENNETH TOLLSTAM, 727 CAPITAL, DAVID RAYMOND DUGGAN, VIRAL STOCKS INC., 10X CAPITAL, CRYPTOBLOC TECHNOLOGIES CORP., NEIL WILLIAM STEVENSON-MOORE, KENNETH CLIFFORD PHILLIPPE, BRIAN BILES, KOOTENAY ZINC CORP., ROBERT TINDALL, AFFINOR GROWERS INC., NICHOLAS BRUSATORE, SAM CHAUDHRY, GREEN 2 BLUE ENERGY CORP., SLAWOMIR SMULEWICZ, MICHAEL YOUNG, GLENN LITTLE, CITATION GROWTH CORP. (FORMERLY KNOWN AS LIHT CANNABIS CORP. AND MARAPHARM VENTURES INC.), DAVID ALEXANDER, YARI ALEXANDER NIEKEN, BLOK TECHNOLOGIES INC., ROBERT DAWSON, JAMES HYLAND, SPEAKEASY CANNABIS CLUB LTD., MARC GEEN, MERVYN GEEN, JEREMY ROSS, ALEXANDER KAULINS, KOPR POINT VENTURES INC. (FORMERLY KNOWN AS NEW POINT EXPLORATION CORP.), BRYN GARDENER-EVANS, INTERNATIONAL CANYON HOLDINGS LTD., JATINDER SINGH BAL, ASAHI CAPITAL CORP., WILSON SU, 1053345 B.C. LTD., ROBERT ABENANTE, ASIATIC MANAGEMENT CONSULTANTS LTD. (NEV.), ASIATIC MANAGEMENT CONSULTANTS LTD. (B.C.), 1140258 B.C. LTD., ARLENE VICTORIA ALEXANDER, 1113300 B.C. LTD., DAVID GREENWAY, 1002349 B.C. LTD., HANSPaul PANNU, SAMAN ESKARANDI, GRANT FARKES, AMBER PAPOU, AIDA REED, AND ISODORO ALONSO

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION
(Settlement Approval)**

THIS COURT ORDERS AND DECLARES that:

- {FLG-00466997;1}

5. The Plaintiffs Michael Tietz, Duane Lowen and Robin Lee are appointed as the Representative Plaintiffs on behalf of the Class Members.
6. This Order, including the Settlement Agreement, is binding upon each Class Member who does not validly opt-out of the Settlement in accordance with the terms of the Settlement Administration Plan, to be approved by the Court at a later date.
7. This Order, including, without limiting the generality of the foregoing, the certification of this Action against the Settling Defendants, and the definitions of the Class Members and the Settlement Common Issue, is without prejudice to any and all procedural and substantive rights, defences, and positions that any of the Non-Settling Defendants now have, may have or take, or may acquire or accrue in the future, whether known or unknown at this time, including rights to or claims for costs, the certification of this Action, the merits of this Action, and any matter of proceeding related to any of the foregoing, save and except as otherwise provided in this Order.
8. The Plaintiffs and Class Members forever release, relinquish and discharge the Defendant, Tindall, and all of the current and former officers, directors, managers, employees, and insurers of Kootenay, except Torres, and the non-party former officer and director of Kootenay, David Schmidt ("Schmidt"), from and against any and all claims, demands, actions, proceedings, suits, causes of action and manners of action that have been brought or could have been brought, are currently pending or were pending, or are ever brought in the future, whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation, common law or equity, arising from or relating in any way to the claims made, or which could have been made against them in this Action, whether class, individual, or otherwise in nature, and whether directly, indirectly, derivatively or in any other capacity, and without limiting the generality of the foregoing, all claims relating to any and all of the proposed common and individual issues made, arising from or relating to the pleaded facts, or the facts which could have been pled, in the Action.
9. The Plaintiffs and the Class Members shall not bring, commence, prosecute or maintain, or cause or permit to be brought, commenced, prosecuted or maintained, or otherwise join, assist, aid or act in concert in any manner whatsoever, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or person, against

Kootenay and its Affiliates, against Torres or Schmidt in their capacities as former officers and directors of Kootenay, any claims, demands, actions, proceedings, suits, causes of action and manners of action that have been brought or could have been brought, are currently pending or were pending, or which could be brought in the future, whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation, common law or equity, whether civil, criminal, regulatory or otherwise, arising from or in any way relating to the pleaded facts, or the facts which could have been pled, in the Action, including, without limitation, with respect to Kootenay securities purchased or sold between January 30, 2018 and November 26, 2018.

10. All claims for contribution, indemnity, other claims over and other relief, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, against the Settling Defendants, which were or could have been brought in this Action, in any other proceeding, or otherwise by any Non-Settling Defendant, as defined in the Settlement Agreement, against any Settling Defendant in their capacity as Issuer or Issuer Officer and/or Director and all of the current and former officers, directors, managers, employees, and insurers of Kootenay, or any Affiliate of any Settling Defendant, or by any Settling Defendant against any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Settling Defendant, or any other person, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a person who has validly opted out of the Settlement), except with respect to Torres and Schmidt, this bar shall apply to them only in their capacities as former officers and directors of Kootenay.
11. If this Court ultimately determines that a claim for contribution, indemnity, other claims over or any other relief, whether in equity, in law, by statute, by regulation or otherwise, is a legally recognized claim:
 - a. the Class shall not be entitled to claim or recover from the Non-Settling Defendants that portion of any damages, restitutionary award, disgorgement of profits, interest and costs that corresponds to the proportionate liability of Kootenay or its Affiliates, Tindall, and Torres and Schmidt but only in their capacities as former officers and directors of Kootenay, proven at trial or otherwise;

- b. the Class shall only be entitled to claim and recover from the Non-Settling Defendants those claims for damages, restitutionary award, disgorgement of profits, interest and costs attributable to the aggregate of the several liability of the Non-Settling Defendants, and for greater certainty, the Class shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants, if permitted by law; and
 - c. this Court shall have full authority to determine the proportionate liability of the Non-Settling Defendants at the trial or other disposition of the action, whether or not the Non-Settling Defendants appear at the trial, and the proportionate liability of the Settling Defendants shall be determined as if the Settling Defendants are parties to this Action and any determination by this Court in respect of the proportionate liability of the Settling Defendants shall only apply in this Action and shall not be binding in any other proceeding.
- 12. Nothing in this Order is intended to or shall limit, restrict or affect any arguments that the Non-Settling Defendants may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs or judgment against them in favour of the Class, or the rights of the Class to oppose or resist any such arguments, except as provided for in this Order.
- 13. The Action is dismissed as against the Defendant Tindall, and the Plaintiffs shall discontinue the action against Kootenay and Torres, but in his capacity as an Issuer Officer and Director only, provided however, the Court shall have jurisdiction with respect to the administration of the Settlement and any dispute that may arise with respect to the Settlement Agreement and this Order.
- 14. All persons and entities provided with notice of this Application shall be bound by the declarations made in, and the terms of, this Order.
- 15. Leave is granted to the Plaintiffs to amend the Notice of Civil Claim to add the following paragraphs:
 - xx. Effective [insert] 2023, the Plaintiffs and the Class entered into a Settlement Agreement with the former Defendants, Kootenay Zinc Corp. (“Kootenay”) and Robert Tindall (“Tindall”), and the Defendant, Von Rowell Torres (“Torres”)

(collectively, the "Settling Defendants"). The Settlement Agreement was approved by the Supreme Court of British Columbia by order made [DATE].

xx. Pursuant to the Settlement Agreement, the Plaintiffs and the Class waive all rights to recover from the Settling Defendants, their current and former officers, directors, managers, employees, and insurers of Kootenay, and, as applicable, their Affiliates, any portion of their damages which are attributable to any fault of Kootenay, its Affiliates and its past and present employees, directors, officers, managers, insurers, Tindall, and Torres and Schmidt but only in their capacities as former officers and directors of Kootenay, and for which any of the Non-Settling Defendants could claim for contribution, indemnity and/or other relief pursuant to the *Negligence Act*, R.S.B.C. 1996, c. 333, any successor legislation, or otherwise.

16. Nothing in this Order or the Settlement Agreement shall limit or in any way vary the Plaintiffs' document production obligations under the *Supreme Court Civil Rules*.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Paul R. Bennett
Lawyer for the Plaintiffs, Michael Tietz and
Duane Loewen, and Stacy Dionne

Signature of Patrick Sullivan
Lawyer for the Defendant, Kootenay Zinc Corp.
and Robert Tindall.

Signature of Dale Lysak
Lawyer for the Defendant, Von Rowell Torres

By the Court.

Registrar

THIS ORDER was prepared by the law firm of Bennett Mounter LLP, whose place of business and address for service is #400 – 856 Homer Street, Vancouver, British Columbia, V6B 2W5. Telephone: (604) 639-3680. Fax: (604) 639-3681. Counsel Reference: Paul R. Bennett and Mark W. Mounter