

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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

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

Plaintiff,

v.

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

Defendants.

**DECLARATION OF MORGAN KIMBALL IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS SETTLEMENT
AND AUTHORIZATION TO DISSEMINATE NOTICE OF SETTLEMENT**

I, Morgan Kimball, hereby declare:

1. I am a Project Manager for Epiq Class Action and Claims Solutions, Inc. (“Epiq”).

At the request of Lead Counsel Bleichmar Fonti & Auld LLP, on behalf of Plaintiffs, I am providing this declaration to give the Court and the parties to the above-captioned action information about the procedures and methods that will be used to provide notice of the proposed settlement to the investors who are potential members of the Settlement Class, and about the

administration of the claims process.¹ I make this declaration based on personal knowledge, and if called to testify I could and would do so competently.

2. Epiq was retained by Lead Counsel, subject to Court approval, to provide notice and claims administration services for the Settlement Class members in the above-captioned case.

3. Epiq has been implementing successful notification and claims administration programs since 1998 and has done so in thousands of cases over the years. Our experience includes many of the largest and most complex settlement administrations in both private securities litigation matters and actions brought by government securities regulators, including the \$6.19 billion *WorldCom* securities settlement, which involved 14 separate settlements, four separate pools of settlement funds, over 40 eligible securities, and notice materials to roughly five million people on three separate occurrences. More information on Epiq's experience can be found on its website at www.EpiqGlobal.com.

4. The proposed notice process, as detailed below, uses procedures that Epiq believes based on its experience constitute best practices under the circumstances.

5. The proposed notice process uses procedures designed to provide direct mail notice to all potential Settlement Class members who can be identified with reasonable effort, including through nominees. To do so, Epiq will utilize a list from Gatos's securities transfer agent of all persons who purchased or otherwise acquired Gatos Securities between October 28, 2020 and January 25, 2022, both inclusive (the "Transfer List"), as well as Epiq's proprietary list of U.S. banks, brokerage firms, and nominees that purchase securities on behalf of beneficial owners.

¹ Capitalized terms not defined herein shall have the meanings specified in the Stipulation of Settlement, dated July 13, 2023, attached to the Memorandum of Law in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and Authorization to Disseminate Notice of Settlement.

6. The Notice will be delivered, via first-class mail, to potential Class Members identified in the Transfer List. The Notice is a folded document with eight 10.5” x 6” panels (commonly referred to as a “self-mailer”). Because recent experience in large securities settlements indicates that about 80% of claims are filed electronically,² the self-mailer does not include a paper Proof of Claim form, but directs potential Settlement Class members (in bold on the first page and through a QR code that can be scanned with a mobile phone) to a case-specific website where they can submit claims electronically or request a paper copy of the Proof of Claim. The self-mailer also provides a toll-free phone number for callers to contact Epiq and request a paper copy of the Proof of Claim.

7. In addition, Epiq will take steps to provide notice to the vast majority of investors who hold their securities through a brokerage firm, bank, institution, or other third-party nominee (“Nominees”). These investors are beneficial purchasers whose securities are held in “street name” (*i.e.*, the securities are purchased and held by one of the Nominees on behalf of the beneficial purchaser).

8. Specifically, if Epiq is appointed by the Court as Claims Administrator, and subject to the Court’s approval of the notice plan, Epiq will send a copy of the Notice by first-class mail to each entity included on a proprietary list of approximately 1,400 Nominees. This list includes the vast majority of the Nominees listed on the Depository Trust Company Security Position Reports as well as the largest and most common broker firms, banks, and other institutions involving publicly-traded securities. This list is contained in a database created and maintained by Epiq (“Nominee Database”). In Epiq’s experience, the institutions included in the Nominee

² See, e.g., *In re Petrobras Sec. Litig.*, 14-cv-9662 (S.D.N.Y.), ECF 970 ¶16.

Database represent a significant majority of the beneficial holders of the securities in most settlements involving publicly-traded companies.

9. In addition, Epiq will also cause the Notice and related materials to be published by the Depository Trust Corporation (“DTC”) on the DTC Legal Notice System (“LENS”). LENS enables participating banks and brokers to review these materials and directly contact Epiq to obtain copies for their clients who may be Settlement Class members.

10. Epiq will promptly mail the Notice directly to all potential Settlement Class members identified by Nominees pursuant to the terms of the notice plan. Epiq will also send copies of the Notice directly to Nominees who indicate they will directly forward to their customers and clients who may be Settlement Class members. Each of these requests will be completed in a timely manner.

11. Epiq has developed ongoing relationships with the appropriate contacts within each Nominee institution. Epiq supports the Nominees throughout the process, and provides additional services such as: coordinating with Nominees to submit claims accurately and efficiently; reviewing the requirements and procedures for submitting claims; explaining the Plan of Allocation; answering questions on recognized loss calculations; updating Nominees on the status of claims and the settlement; coordinating with Nominees for an efficient disbursement; and answering all investor inquires in a professional, knowledgeable, and timely manner.

12. All names and addresses obtained by Epiq will be reviewed by Epiq to identify and eliminate exact name and address duplicates and incomplete data prior to mailing. Any Notices that are returned as undeliverable will be reviewed to determine if an alternative or updated address is available from the Postal Service, and will be re-mailed to the updated or alternative address.

13. The combination of direct mailing of the Notice and electronic dissemination of the Long-Form Notice and Proof of Claim (with paper copies available through the website or by phone) significantly reduces printing and postage costs and waste.

14. Epiq will supplement the direct mailing program described above by publishing the Summary Notice in *Investor's Business Daily* and will transmit the Summary Notice over *PR Newswire*. News outlets often use posted notices as the basis for their own stories about litigation settlements involving publicly-traded companies, thereby creating added awareness of the proposed settlement among investors.

15. In addition, Epiq will supplement the direct mailing and publication notice program with two forms of digital notice: Google Display Network and Yahoo! Finance. This digital notice will involve the publication of banner advertisements on pages associated with finance, investment, and stock trading on the Google Display Network and Yahoo! Finance websites. The banner advertisements will allow visitors of the websites to click on a link taking them directly to the settlement-specific website.

16. Throughout the notification and claims processing period, Epiq will maintain a toll-free number to accommodate potential Settlement Class members' inquiries, 877-757-6172.

17. Epiq will also maintain a settlement-specific website, www.GatosSecuritiesLitigation.com, where key documents will be posted, including the Stipulation of Settlement, the Notice, the Long-Form Notice, and the Proof of Claim. The website will also provide summary information regarding the case and settlement and highlight important dates, including the date of the settlement approval hearing. The website will also allow Settlement Class members to submit claims electronically. All posted documents will be available for downloading from the website.

18. The claims administration process will follow established procedures in securities class actions. In summary, Settlement Class members will be required to complete the Proof of Claim form to provide the transaction information and documentation necessary to calculate their Recognized Loss Amounts and Recognized Claims pursuant to the Plan of Allocation (set forth in full in the Long-Form Notice).

19. Once Epiq has processed all submitted claims, notified claimants of deficiencies or ineligibility, processed responses, and made claim determinations, Epiq will make distributions to Authorized Claimants. If any monies remain in the Net Settlement Fund after the initial distributions, Epiq will conduct re-distributions until it is no longer cost-effective to do so. At such time, consistent with Local Rule 23's provisions regarding the disposition of residual funds, any remaining balance will be contributed to a non-profit, charitable organization serving the public interest and unaffiliated with the Parties or their counsel, selected by Lead Counsel.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Dated: Sacramento, California
July 13, 2023

By:  Morgan Kimball

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2023, a copy of the foregoing was filed electronically with the Clerk of Court via CM/ECF. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the court's CM/ECF system.

/s/ Joseph A. Fonti

Joseph A. Fonti