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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 In re Silver Wheaton Corp.
12 Securities Litigation

13 Master File No: 2:15-cv-05146-CAS-PJWx
14 c/w: 2:15-cv-05173-CAS(PJWx)

15 **CONSOLIDATED SECOND AMENDED**
16 **COMPLAINT FOR VIOLATIONS OF**
17 **THE SECURITIES LAWS**

18 JURY TRIAL DEMANDED

19 Complaint Filed: July 8, 2015
20 Trial Date: None Set

21 Plaintiffs and Class Representatives (together "Plaintiffs"), by Plaintiffs'
22 undersigned attorneys, individually and on behalf of all other persons similarly
23 situated, alleges the following based upon personal knowledge as to Plaintiffs' own
24 acts, and information and belief as to all other matters, based upon, *inter alia*, the
25 investigation conducted by and through Plaintiffs' attorneys, which included, among
26 other things, a review of Defendants' public and other documents, conference calls
27 and announcements made by Defendants, United States Securities and Exchange
28 Commission ("SEC") filings, wire and press releases published by and regarding

1 Silver Wheaton Corp. (“Silver Wheaton Canada,”)¹ interviews with former Silver
2 Wheaton employees, depositions, documents produced in discovery, consultation
3 with Canadian operational and legal experts on Canadian tax transfer pricing rules,
4 and information readily obtainable on the Internet. Plaintiffs believe that substantial
5 evidentiary support will exist for the allegations set forth herein after a reasonable
6 opportunity for discovery.

7 **NATURE OF THE ACTION**

8 1. This is a federal securities class action brought on behalf of a class
9 consisting of all persons and entities who purchased the publically traded securities of
10 Silver Wheaton Canada (i) on a United States exchange, or (ii) in a transaction in the
11 United States, during the period from March 30, 2011 to July 6, 2015, inclusive, and
12 did not sell such securities prior to July 6, 2015. Excluded from the Class are
13 Defendants, all present and former officers and directors of Silver Wheaton and any
14 subsidiary thereof, members of such excluded persons’ families and their legal
15 representatives, heirs, successors or assigns and any entity which such excluded
16 persons controlled or in which they have or had a controlling interest.

17 2. Silver Wheaton, a precious metals streaming company, pioneered the
18 business in 2004. Put simply, Silver Wheaton makes large, up-front payments to
19 mines it neither owns nor operates in exchange for the guaranteed right to buy a large
20 portion of the mine’s future silver output at roughly the costs of producing it,
21 reselling it in the liquid silver market for much higher prices. This Complaint refers
22 to such agreements as “streaming agreements” and the silver from any particular
23 mine “streams.”

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26 ¹ This Complaint uses the term “Silver Wheaton” to refer to activities undertaken by
27 Silver Wheaton Canada together with its subsidiaries. “Silver Wheaton Canada”
28 refers to Silver Wheaton Corp. alone. “Silver Wheaton Caymans” refers to activities
undertaken solely by Silver Wheaton (Caymans) Ltd.

1 3. The up-front payments often amount to several hundred million dollars.
2 Accordingly, Silver Wheaton must select mines and negotiate up-front payments and
3 other streaming agreement terms with great care. The seasoned industry professionals
4 who staff Silver Wheaton’s Vancouver, Canada headquarters (i.e., Silver Wheaton
5 Canada), many of whom have long careers in the mining sector, work long hours to
6 carefully model future profitability of silver mines under a host of conditions, while
7 calculating and considering carefully whether various political, geological, and
8 operational risks exist, and if so whether they fall within tolerable limits. Silver
9 Wheaton Canada conducts ongoing due diligence of the mines even after entering
10 into streaming agreements, negotiating favorable outcomes when unexpected events
11 occur at the mines. Beyond that, Silver Wheaton Canada’s skilled staff are taken
12 seriously, leveraging their professional reputations to confidently approach both
13 financiers and mines.

14 4. These activities, undertaken by the skilled staff of Silver Wheaton
15 Canada, accounted for nearly all of Silver Wheaton’s activities. There was a small
16 remainder, however. Someone had to physically sign the streaming agreements. And
17 someone had to perform the back-office function of selling the silver received, which
18 Silver Wheaton never takes physical possession of, to brokers.

19 5. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 6. During the Tax Period of 2005 through 2010, Canada had in place
4 transfer pricing rules eliminating the opportunity for multi-national enterprises to
5 obtain a tax advantage by adopting intra-group pricing strategies that shift income to
6 a related party that is resident in a low tax jurisdiction. These rules required such
7 enterprises to ensure, for tax purposes, that the amounts included in the income of a
8 Canadian taxpayer for transactions entered into with non-resident persons with which
9 the taxpayer does not deal at arm's length reflect the price that arm's length parties
10 would agree to pay.

11 7. Deloitte LLP (Canada) ("Deloitte"), which was both Silver Wheaton
12 Canada's auditor [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 8. [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 9. [REDACTED]
27 [REDACTED]
28 [REDACTED]

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6 10. [REDACTED]
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8 [REDACTED]
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17 11. [REDACTED]
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20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 12. Deloitte nevertheless signed off on Silver Wheaton Canada's financial
26 statements, even though the statements did not record or disclose Silver Wheaton's
27 potential tax liability because it attributed income to Silver Wheaton Caymans.

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1 13. [REDACTED]

2 [REDACTED]

3 14. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 15. [REDACTED]

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15 16. [REDACTED]

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20 17. [REDACTED]

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23 [REDACTED]

24 [REDACTED]

25 18. [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 19. In October 2009, the CRA told Silver Wheaton that it would audit its
2 international transactions.

3 20. [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 21. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 22. [REDACTED]
16 [REDACTED]
17 [REDACTED] Recharacterization meant ignoring
18 Silver Wheaton Canada's characterization that Silver Wheaton Canada merely
19 provided "routine services" to Silver Wheaton Caymans, instead treating the
20 transactions in an economically rational way. [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 23. [REDACTED]
26 [REDACTED]
27 [REDACTED]

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24. [REDACTED]

25. But even though Deloitte knew that disclosure was required if it was reasonably possible that the CRA would invalidate Silver Wheaton Canada's tax position, and even though Deloitte actually knew that it was at least reasonably possible that it would do so, Silver Wheaton's 2011 financial statements did not disclose either that it was more likely than not or that there was a reasonable possibility that the CRA would invalidate Silver Wheaton's tax position, resulting in an enormous tax reassessment and a much less profitable enterprise.

26. Thus, even though Deloitte knew that it was more likely than not, or that there was a reasonable possibility, that the CRA would invalidate Silver Wheaton's tax position, it nonetheless certified to investors that Silver Wheaton's 2011 financial statements were materially accurate.

27. In May 2012, the CRA conducted interviews of Silver Wheaton Caymans personnel. [REDACTED]

28. [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 29. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 30. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 31. Silver Wheaton Canada's 2012 financial statements, filed in 2013, did
14 not disclose that it was more likely than not, or even that there was a reasonable
15 possibility, that the CRA would invalidate Silver Wheaton's tax position. Deloitte
16 again certified the financial statements.

17 32. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

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23 33. [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

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34. [REDACTED]

35. On July 6, 2015, Silver Wheaton Canada issued a press release, announcing that the CRA had reassessed Silver Wheaton Canada’s 2005-2010 income (the “Reassessment”). The Reassessment determined that the transfer pricing provisions of the Income Tax Act (Canada) (“Tax Act”) should be applied to recharacterize Silver Wheaton Caymans income as Silver Wheaton Canada income. As a result, Silver Wheaton Canada’s taxable income increased by approximately CDN\$715 million for the Tax Period, resulting in more than CDN\$261 million in additional taxes and penalties assessed against Silver Wheaton Canada.

36. [REDACTED]

37. On this news, the Company’s share price fell \$2.08 per share, or almost 12%, to close at \$15.46 per share on July 7, 2015.

38. Shortly thereafter, several Wall Street analysts commented that the news that the CRA had determined that Silver Wheaton’s transfer pricing tax position violated Canadian tax laws had reduced Silver Wheaton’s net asset value by 30-40%.

39. [REDACTED]

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[REDACTED]

JURISDICTION AND VENUE

40. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. § 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 8 240.10b-5).

41. This Court has jurisdiction over the subject matter of this action pursuant to § 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

42. Venue is proper in this District pursuant to §27 of the Exchange Act, 15 U.S.C. §78aa and 28 U.S.C. §1391(b), as the misleading statements entered into this District.

43. In connection with the acts, conduct and other wrongs alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mail, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

44. Court-appointed Class Representatives Joe Elek, Thomas Bartsch, Larry Brandow, Diana Choi, Ben Potaracke, Jędrzej Borowczyk, and Charles Remmel acquired Silver Wheaton securities at artificially inflated prices during the Class Period and were damaged upon the revelation of the alleged corrective disclosures. Their PSLRA certifications were previously filed with the Court and are incorporated by reference.

45. Defendant Silver Wheaton pioneered the business of precious metal streaming. Silver Wheaton is headquartered in Vancouver, British Columbia, Canada and during the Class Period traded on the NYSE under the ticker symbol “SLW.”

1 46. Defendant Randy V. J. Smallwood has served as Silver Wheaton
2 Canada's President since January 2010 and as CEO from April 11, 2011 to the
3 present. Smallwood is one of the founding members of Silver Wheaton. In 2005, he
4 joined Silver Wheaton Canada as Executive Vice-President of Corporate
5 Development, primarily focusing on growing Silver Wheaton through the evaluation
6 and acquisition of silver stream opportunities. Smallwood's career in the mining
7 industry began in the early 1980's. He joined Wheaton River Minerals, from which
8 Silver Wheaton was spun off, in 1993.

9 47. Defendant Peter Barnes is a Chartered Accountant and was one of Silver
10 Wheaton's founders in 2004. Mr. Barnes served as Silver Wheaton Canada's
11 Executive Vice-President and Chief Financial Officer from 2004 until his
12 appointment as Chief Executive Officer in April 2006. He then served as the
13 Company's CEO and a director from 2006 until his resignation effective April 11,
14 2011. He was director of Deloitte's Vancouver office's audit practice from 1983 to
15 1990. Barnes had over 15 years' experience as an auditor before he moved to senior
16 management in 1995.

17 48. Defendant Gary Brown joined Silver Wheaton Canada as its CFO in
18 2008 and has served in that position since.

19 49. Smallwood, Barnes, and Brown are sometimes collectively referred to
20 herein as the "Individual Defendants."

21 50. The Individual Defendants and Silver Wheaton are the "Silver Wheaton
22 Defendants."

23 51. Deloitte LLP (Canada), Chartered Professional Accountants, is an
24 Ontario, Canada partnership. Deloitte has been Silver Wheaton's registered
25 independent auditor for Silver Wheaton's entire existence.

26 52. Defendants Silver Wheaton, Deloitte, and the Individual Defendants are
27 referred to herein, collectively, as the "Defendants."

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RELEVANT NON-PARTIES

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Silver Wheaton Canada employees

53. Nolan Watson served as Silver Wheaton Canada’s CFO from 2005 through July 2008. Watson worked as a consultant in Deloitte’s Vancouver office for two years immediately before joining Silver Wheaton, with Amy Cheema.

54. Mark Reineking served as Silver Wheaton’s Controller from June 2007 through November 2008. He continued to serve as Silver Wheaton’s Director of Finance until April 2011. Reineking is a CFA and a CPA.

55. Jamie Beirnes has served as Silver Wheaton’s Controller since December 2008. Beirnes’ career in accounting began in 1991 at the latest, and prior to joining Silver Wheaton Canada as its Controller, he had 9 years of experience as controller of progressively larger enterprises.

56. Bettina Charpentier was a partner at PwC until May 2010, when she joined Silver Wheaton as its Vice-President of Tax, a position she retains to this day.

[REDACTED]

Silver Wheaton Caymans employees

57. Nik Tatarkin has been the head of Silver Wheaton Caymans since December 2007. Nik Tatarkin served as Silver Wheaton Canada’s Treasurer from January 2007 through December 2007. Tatarkin graduated from college with a Bachelor’s degree in 2001.

58. Brad Carpenter joined Silver Wheaton Caymans as its Controller, and second employee, in July 2006. Carpenter became its Director of Contract Compliance in 2013. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

59. Juan Jose Granados joined Silver Wheaton Caymans [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

60. Bill Koutsouras was a third-party contractor and employee of Endeavour Mining [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Koutsouras graduated from college with a B.A. in 1997.

61. Eduardo Luna served as Silver Wheaton Canada’s Chairman from October 2004 through May 2009 and was its Interim Chief Executive Officer from October 2004 through April 2006. He has also served as a Silver Wheaton Canada director since the Company’s inception. [REDACTED]

[REDACTED]

62. Former Employee 1 (“FE1”) was an Accountant at Silver Wheaton Caymans from December 2007 to November 2013. FE1, one of the first employees hired in the Caymans, was hired to help open Silver Wheaton’s Caymans Islands office in March 2008. She performed bookkeeping tasks, such as reconciliation, data entry and making sure the company was receiving payments it was expecting.

63. FE1 reported to Brad Carpenter and Nik Tatarkin. FE1 also reported to Giselle Fedalizo, who was Manager of Corporate Accounting at Silver Wheaton

1 Canada, when Fedalizo began working as the Assistant Controller in the Caymans
2 Islands office in July 2013.

3 *PwC employees*

4 64. Elizabeth Finch was elevated to PwC's partnership in July 2007. [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 65. Andrew McCrodan was [REDACTED]
9 [REDACTED] McCrodan worked out of PwC's Toronto office.

10 *Deloitte employees*

11 66. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 67. Shiraj Keshvani was a Deloitte tax dispute resolution partner. [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 68. Amy Cheema worked as an auditor for Deloitte and an audit firm it
19 acquired since the beginning of her career in 2000 until April 2008, when she joined
20 Silver Wheaton as its Director of Financial Reporting & Operations. Cheema returned
21 to Deloitte in August 2009. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 Cheema was
26 elevated to Deloitte partnership in May 2011, [REDACTED]
27 [REDACTED] Cheema left Deloitte in December
28 2012.

1 69. Robert Stewart was a Deloitte partner specializing in transfer pricing

2 [REDACTED]

3 70. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 71. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 72. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 **DELOITTE’S PRODUCTION**

13 73. In March 2017, Judge McDermott issued letters rogatory seeking the
14 assistance of the British Columbia Supreme Court in compelling production of
15 documents from Deloitte and PwC.

16 74. Deloitte opposed Plaintiffs’ request before the British Columbia
17 Supreme Court. Following a contested hearing, The Hon. Justice Milman issued an
18 Order, dated August 17, 2017, requiring Deloitte to produce documents (the “BC
19 Order”):

- 20 1. All audit working papers and audit permanent files subject to claims
21 of privilege, concerning Deloitte's audit of Silver Wheaton s financial
22 statements for the years ended December 31, 2009 through 2015 that
23 touch on, are related to, or concern, in any respect Silver Wheaton's
24 transfer pricing tax position on Silver Wheaton (Cayman), contingent tax
25 liability related to transfer pricing or recharacterization concerning
26 Silver Wheaton (Cayman) or the CRA Audit including but not limited
27 to:

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- 1 a. Estimates, costs projections or reserves for legal or other costs
- 2 in connection therewith;
- 3 b. Silver Wheaton's compliance with ASC 740, IAS 12 IAS 37,
- 4 and FASB 5 in connection therewith;
- 5 c. Risk analysis, damages, calculations, loss reserves fines
- 6 penalties taxes, or withholding of any distributions to shareholders
- 7 in connection therewith;
- 8 d. Compliance with Sections 247 and 251 of the Income Tax Act
- 9 in connection with Silver Wheaton (Cayman) for the 2005-2010
- 10 tax year;
- 11 e. All management representations in connection with the above.

12 75. The BC Order contemplated that Deloitte would complete production on
13 or before October 6, 2017.

14 76. Deloitte refused to conduct a wholesale review of particular audit files in
15 response to the BC Order. Instead, Deloitte represented that it would only employ
16 search terms to narrow the documents subject to review.

17 77. Deloitte made a production on October 6, 2017, purportedly in complete
18 satisfaction of the BC Order.

19 78. Upon review, Plaintiffs determined that Deloitte's October 6, 2017
20 production excluded critical documents. Plaintiffs further determined that it was quite
21 easy to identify the missing but highly relevant subsections in the audit working
22 papers that Deloitte should review for production.

23 79. Accordingly, on October 31, 2017, Plaintiffs contacted Deloitte, seeking
24 to have Deloitte review specified subsections of its audit working papers, as well as
25 use additional search terms for relevant documents.

26 80. Deloitte produced more relevant documents on January 5, 2018.

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1 81. Deloitte represented that, in response to the BC Order, it (among other
2 things) reviewed relevant sections of its audit working papers and produced
3 responsive documents.

4 82. When this Second Amended Complaint refers to the absence of
5 documents from Deloitte's working papers, it is because the documents were not
6 produced in either Deloitte's October 6, 2017, or January 5, 2018 productions.

7 **DEFENDANTS' MISCONDUCT**

8 **Canadian Transfer Pricing Rules Related to Income Taxes**

9 **(a) *Transfer Pricing Rules in Canada***

10 83. Corporations that reside in Canada for the purposes of the Income Tax
11 Act (Canada)² (the "Tax Act") are subject to tax on their worldwide income from all
12 sources.³

13 84. When computing taxable income, Canadian tax law generally does not
14 look to the economic substance of a transaction to determine its tax treatment.⁴

15 85. Nevertheless, the Canadian government recognized that parties not
16 dealing with one another at "arm's length" will frequently be motivated to structure
17 their dealings in a manner that deviates from what would prevail in the open market,
18 in an effort to reduce the aggregate amount of income tax payable. In particular,
19 absent statutory restrictions, parties may seek to structure transactions that, while
20 legally effective, are premised on pricing that is not consistent with the pricing that
21 would have been agreed to by parties dealing with one another at arm's length.

22 86. In light of such concerns, the government enacted a detailed set of
23 transfer pricing provisions to ensure that, for tax purposes, the amounts included in
24 the income of a Canadian taxpayer in respect of transactions entered into with non-
25 resident persons with which the taxpayer does not deal at arm's length ("Related

26 _____
27 ² R.S.C. 1985, c. 1 (5th Supp.), as amended.

28 ³ *Id.* at §2(1).

⁴ *Shell Canada Ltd. v. The Queen*, [1999] 3 S.C.R. 622, 99 D.T.C. 5669.

1 Non-Residents”) accurately reflect the pricing that would have been established if the
2 transactions had instead been undertaken by independent parties at arm’s length (the
3 “Transfer Pricing Rules”).

4 **(b) *The Transfer Pricing Rules – First Principles***

5 87. From a tax perspective, the price paid for property, services, commercial
6 opportunities, the assumption of risk, or any other right or advantage (collectively,
7 “Property”) is of great significance. Most notably, a person that sells Property is
8 generally required to include the amount receivable in exchange for the Property
9 when computing its taxable income.⁵

10 88. When a transaction is undertaken by parties that do not deal with one
11 another at “arm’s length,” an incentive may arise to price the transaction in a manner
12 that artificially increases or decreases the price payable for Property. For example, if
13 the seller of Property is subject to high income tax rates, or the purchaser will derive
14 limited benefit from being able to claim a tax deduction in respect of the amount paid
15 for the Property, the parties may attempt to minimize the operative transfer price.

16 89. The Transfer Pricing Rules seek to eliminate the opportunity for multi-
17 national enterprises to obtain a tax advantage by adopting intra-group pricing
18 strategies that shift income to a related party that is resident in a low tax jurisdiction.

19 90. The Transfer Pricing Rules apply to adjust the amounts paid by one
20 party for Property provided by another party with which it does not deal at “arm’s
21 length” to reflect market prices.

22 91. Statutory provisions substantively similar to the Transfer Pricing Rules
23 have been widely adopted by most developed nations. The Transfer Pricing Rules are
24 premised on the “arm’s length principle” (the “Arm’s Length Principle”), which has
25 been endorsed by the member states of the Organisation for Economic Co-operation
26

27
28 ⁵ Tax Act, *supra* note 2 at Part I, Division B.

1 and Development (the “OECD”), including Canada,⁶ as the international standard to
2 be applied when determining transfer prices for tax purposes.

3 92. The Arm’s Length Principle provides that where:

4 conditions are made or imposed between... two enterprises in their
5 commercial or financial relations which differ from those which would
6 be made between independent enterprises, then any profits which would,
7 but for those conditions, have accrued to one of the enterprises, but, by
8 reason of those conditions, have not so accrued, may be included in the
9 profits of that enterprise and taxed accordingly.⁷

10 (c) ***The Transfer Pricing Rules – Statutory Framework***

11 93. The Transfer Pricing Rules took effect in 1988 and are found principally
12 in section 247 of the Tax Act.

13 94. The range of transactions that may fall within the ambit of the Transfer
14 Pricing Rules is extremely broad. The sale of goods and services, the licensing of
15 intellectual property, the provision of commercial opportunities, the assignment of
16 existing contractual rights, and a host of different types of lending, hedging,
17 insurance, and derivative arrangements are all potentially subject to the Transfer
18 Pricing Rules.

19 95. The Transfer Pricing Rules apply in respect of transactions between
20 parties that do not deal with one another at “arm’s length.”⁸ The circumstances under
21 which persons are considered not to be dealing with one another at “arm’s length” are
22 set out in section 251 of the Tax Act.

23 96. Both “related persons” and persons that factually do not deal with one
24 another at arm’s length are defined by statute as not dealing with one another at

25 _____
26 ⁶ M.N.R., Information Circular 87-2R “International Transfer Pricing” (27 September
1999).

27 ⁷ OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax*
28 *Administrations*, (Paris: OECD, 2001) at ¶1.6.

⁸ Tax Act, *supra* note 2 at §247(2).

1 “arm’s length.”⁹ The Tax Act describes the categories of persons that are deemed to
2 be “related persons,”¹⁰ including a corporation and its wholly owned subsidiary, and
3 two corporations that are controlled by the same person or group of persons.¹¹

4 (i) *Charging Provision*

5 97. Subsection 247(2) of the Tax Act is the main charging provision in the
6 Transfer Pricing Rules. Subsection 247(2) provides that where a taxpayer and a
7 Related Non Resident are participants in a transaction or a series of transactions (a
8 “Related Party Transaction”) and

9 (a) the terms or conditions made or imposed between any of the participants in
10 respect of the transaction or series differ from those that would have been made
11 between persons dealing at arm’s length, or

12
13 ⁹ The Canadian courts have frequently been called upon to consider when parties may
14 factually be considered not to deal with one another at arm’s length. During the
15 “Period” (as defined herein), the Canada Revenue Agency summarized the applicable
16 jurisprudence in this regard by stating:

17 The following criteria have generally been used by the courts in
18 determining whether parties to a transaction are not dealing at “arm’s
19 length”:

- 20 • was there a common mind which directs the bargaining for both
21 parties to a transaction;
- 22 • were the parties to a transaction acting in concert without
23 separate interests; and
- 24 • was there “*de facto*” control.

25 [M.N.R., Interpretation Bulletin IT-419R2 “Meaning of Arm’s Length”
26 (8 June 2004) at ¶23.]

27 ¹⁰ Tax Act, *supra* note 2 at §251(2).

28 ¹¹ In this context, “control” is defined as *de jure* control, which typically is considered
to arise in a corporate context where a person has the right to exercise “effective
control” over the affairs of the corporation. Effective control of a corporation
generally is considered to exist where a person enjoys the right to elect a majority of
the directors of the corporation.

1 (b) the transaction or series

2 (i) would not have been entered into between persons dealing at
3 arm's length, and

4 (ii) can reasonably be considered not to have been entered into
5 primarily for bona fide purposes other than to obtain a tax benefit,¹²

6 any amounts that, but for the transfer pricing rules and certain other anti-avoidance
7 provisions, would be determined for the purposes of the Tax Act in respect of the
8 taxpayer are to be adjusted to equal the amounts that would have been determined if,

9 (c) where only paragraph (a) applies, the terms and conditions made or
10 imposed between the participants in respect of the transaction or series had been
11 those that would have been made between persons dealing at arm's length, or

12 (d) where paragraph (b) applies, the transaction or series is recharacterized
13 to reflect the transaction or series that would have been entered into between persons
14 dealing at arm's length, under terms and conditions that would have been made
15 between persons dealing at arm's length.

16 98. In effect, the Transfer Pricing Rules may, for tax purposes, adjust the
17 prices agreed to by a Canadian taxpayer and a Related Non-Resident in two different
18 ways. First, if the subject transaction is of the type that would otherwise have
19 occurred in the market between persons dealing at arm's length, the pricing of the
20 transaction is adjusted to reflect the pricing that would have arisen in an arm's length
21 context. Second, if the transaction is not the type that would have been entered into
22 between persons dealing at arm's length, and it can reasonably be considered not to
23 have been entered into primarily for bona fide purposes other than to obtain a tax
24 advantage, the pricing of the transaction is adjusted to reflect the pricing that would
25 have been set in a replacement transaction that would have been entered into between

26
27 _____
28 ¹² For these purposes, a "tax benefit" is defined as including a reduction, avoidance or
deferral of tax or other amounts payable under the Tax Act.

1 persons dealing at arm's length, under terms and conditions that would have been
2 agreeable to arm's length parties.

3 99. If the Canadian tax authority, the CRA, believes that a taxpayer has
4 contravened the Transfer Pricing Rules (i.e., the transactions between the taxpayer
5 and the Related Non-Resident do not reflect arm's length transfer prices), the CRA
6 may (i) recompute the taxable income of the taxpayer on the basis of the arm's length
7 transfer prices that the CRA believes would have applied to the subject transactions,
8 and (ii) reassess the income tax payable by the taxpayer by applying the applicable
9 income tax rate to the adjusted taxable income of the taxpayer.¹³ Where a taxpayer is
10 assessed for additional income tax payable, late filing or other penalties may also be
11 assessed.¹⁴

12 100. The CRA ordinarily need not obtain approval from any internal
13 committees in order to reassess taxes. However, if the CRA wishes to recharacterize
14 transactions, it must obtain the approval of the Transfer Pricing Review Committee
15 (the "Review Committee"). The CRA also requires the Review Committee's approval
16 merely to explore recharacterization.

17 101. The CRA obtains the Review Committee's authorization to
18 recharacterize transactions through a recharacterization referral, with notice to, and
19 with an opportunity to comment by, the taxpayer.

20 (ii) *Penalty Provision*

21 102. In addition to potentially increasing the taxable income arising from a
22 Related Party Transaction, the application of the Transfer Pricing Rules can also
23 result in the assessment of a special transfer pricing penalty.¹⁵

24 103. A taxpayer may be liable for the special transfer pricing penalty where
25 the relevant transfer pricing adjustment exceeds a prescribed threshold.¹⁶ If
26

27 ¹³ Tax Act, *supra* note 2 at §152 and §247(11).

28 ¹⁴ *See*, for example, *id.* at §162-163.

¹⁵ *Id.* at §247(3).

1 applicable, the special transfer pricing penalty is generally equal to 10% of the sum of
2 (i) the relevant transfer pricing adjustments, minus (ii) the total of all transfer pricing
3 adjustments that relate to transactions for which the taxpayer has made “reasonable
4 efforts to determine [and use] arm’s length transfer prices.”

5 104. In determining whether a taxpayer has made reasonable efforts to
6 determine and use arm’s length transfer prices, the CRA has stated that it will
7 consider whether the taxpayer took all reasonable steps to ensure that its transfer
8 prices conformed with the Arm’s Length Principle.¹⁷ However, a Canadian taxpayer
9 will be deemed not to have made reasonable efforts to determine and use arm’s length
10 transfer prices if it does not make or obtain “contemporaneous documentation” in
11 respect of the transaction on or before the “documentation-due date”¹⁸ for the taxation
12 year in which the transaction occurred.¹⁹

13 105. The Transfer Pricing Rules define “contemporaneous documentation” as
14 records or documents that provide a description that is complete and accurate in all
15 material respects of

- 16 (i) the property or services to which the transaction relates,
17 (ii) the terms and conditions of the transaction and their relationship,
18 if any, to the terms and conditions of each other transaction entered into
19 between the participants in the transaction,
20 (iii) the identity of the participants in the transaction and their
21 relationship to each other at the time the transaction was entered into,

22
23 ¹⁶ The Transfer Pricing Rules generally provide that a taxpayer may only be subject
24 to the special transfer pricing penalty if the “net adjustment” from the application of
25 the Transfer Pricing Rules is greater than the lesser of (i) CDN\$5 million, and
26 (ii) 10% of the Canadian taxpayer’s prescribed gross revenue for the year.

27 ¹⁷ Information Circular 87-2R, *supra* note 6 at ¶179.

28 ¹⁸ The “documentation-due date” is typically the date on which the Canadian taxpayer
is required to file its income tax return.

¹⁹ Tax Act, *supra* note 2 at §247(4).

1 (iv) the functions performed, the property used or contributed and the
2 risks assumed in respect of the transaction by the participants in the
3 transaction,

4 (v) the data and methods considered and the analysis performed to
5 determine the transfer prices in respect of the transaction, and

6 (vi) the assumptions, strategies and policies, if any, that influenced the
7 determination of the appropriate transfer prices in respect of the
8 transaction.

9 **(d) *Application of the Transfer Pricing Rules***

10 106. The Transfer Pricing Rules require a Canadian taxpayer transacting with
11 a Related Non-Resident to (i) fully and accurately define the Property being provided
12 by one party to another, and (ii) ascertain and adopt the price that would be paid for
13 such Property by parties dealing with one another at arm's length.

14 107. The CRA has published a large number of statements that outline the
15 agency's interpretation of section 247 of the Tax Act.

16 108. In September 1999, the CRA issued a detailed Information Circular that
17 set out its views on the application of section 247 and the related transfer pricing
18 compliance obligations of Canadian taxpayers (the "CRA Circular").²⁰ The CRA
19 Circular contains an extensive discussion of the attributes of each property, service or
20 advantage provided by a Canadian taxpayer to a Related Non-Resident that need to
21 be considered when assessing the applicable arm's length transfer price of such
22 Property.

23 109. The CRA Circular states that, in the absence of independent comparable
24 transactions from which arm's length transfer prices may be derived, the

25

26 ²⁰ Information Circular 87-2R, *supra* note 6. The CRA Memorandum contains a
27 broad cross-referencing paragraph that reads "The OECD Guidelines should be
28 consulted for a more detailed discussion of the principles contained in Parts 2 to 6 of
this circular." Parts 2 to 6 contain the core sections of the CRA Circular.

1 determination of an arm’s length transfer price in respect of a transaction generally
2 requires that each of the functions performed, the assets used or applied, and the risks
3 assumed by each party be fully delineated and quantified. The relevance of such
4 criteria is affirmed by the express wording of section 247 of the Tax Act, which
5 stipulates that the contemporaneous documentation maintained by a taxpayer must
6 provide a complete and accurate description of “the functions performed, the property
7 used or contributed and the risks assumed, in respect of the transaction, by the
8 participants in the transaction.”

9 110. The CRA Circular incorporates by reference many of the interpretive
10 principles expressed by the OECD in its Transfer Pricing Guidelines for
11 Multinational Enterprises and Tax Administrations (the “OECD Guidelines”).²¹
12 OECD Guidelines provide that compensation between independent enterprises
13 “usually will reflect the functions that each enterprise performs (taking into account
14 assets used and risks assumed).”²² In this regard, the OECD Guidelines direct that
15 the “functional analysis [to be performed as part of a transfer pricing analysis] is
16 incomplete unless the material risks assumed by each party have been considered
17 since the assumption or allocation of risks would influence the conditions of
18 transactions between the associated enterprises.”²³ In considering the allocation of
19 risk, the OECD Guidelines also caution that it is necessary to consider whether the
20 purported allocation of risk by the parties to a transaction is consistent with the
21 economic substance of the transaction.²⁴

22 (e) *Calculating Arm’s Length Prices*

23 111. The CRA Circular recognizes 5 different methods of determining an
24 appropriate transfer price, of which three are relevant here: the *cost plus* method (the
25

26 ²¹ OECD Guidelines, *supra* note 7.

27 ²² *Id.* at ¶1.20.

28 ²³ *Id.* at ¶1.23.

²⁴ *Id.* at ¶1.26.

1 “cost plus method”), the *residual profit split* method (the “profit split method”), and
2 the *transactional net margin* method (the “net margin method”). CRA Circular, ¶48.

3 112. Each of the methods aims to determine appropriate transfer prices by
4 reference to prices paid by similar businesses in a truly arm’s length relationship.
5 There are multiple methods because the CRA Circular recognizes that each of the
6 methods may not be appropriate to every kind of business.

7 113. The profit split method attempts to distribute the combined enterprise’s
8 profits between the taxpayer and the non-arm’s length party. In applying the profit
9 split method, the taxpayer begins by segregating the readily identifiable functions of
10 the combined enterprises. CRA Circular, ¶101 (citing manufacturing or distribution
11 as kinds of businesses where it is appropriate to employ the residual profit method).
12 The taxpayer then identifies which of the related parties is responsible for these
13 functions and provides that entity with a profit margin for those functions based on
14 available information from other companies (e.g., the entity that engages in
15 manufacturing might be entitled to a 10% return on manufacturing costs, based on
16 comparables). *Id.* The residual profits that remain after this step are divided between
17 the two entities based on “any information [] that indicates how arm’s length parties
18 would divide the profit or loss in similar circumstances,” with a focus on the party
19 contributing intangible assets. The taxpayer’s taxable income is then calculated as the
20 sum of income from the segregable functions and the residual profits attributable to
21 the taxpayer. Because in using the residual profit split method the taxpayer analyzes
22 **both** parties to the transaction, it is referred to as a ***two-sided method***.

23 114. In contrast, the cost plus and net margin methods are one-sided methods,
24 because they only focus on the activities of one of the parties. In both methods, the
25 taxpayer begins by identifying which of the two parties to the transaction is the least
26 complex. Application of the methods then focuses entirely on the least complex party.

27 115. After identifying the least complex party, the taxpayer then identifies the
28 functions performed by that least complex party. Having identified the functions, the

1 taxpayer determines the costs of providing the functions. The taxpayer then includes
2 as taxable income of the Canadian party both the costs identified and an appropriate
3 gross (under the cost plus method) or net (under the net margin method) margin, as
4 determined by reference to comparable companies.

5 116. Importantly, the cost plus and net margin methods are only appropriate
6 where the least complex party contributes no non-routine intangibles. CRA Circular,
7 ¶¶76-89, 106-119. This category includes know-how, customer lists and data, and
8 technical data. It also includes items that convey reputation, such as trademarks.
9 OECD Guidelines, Chapter VI, ¶6.2. “Know-how” in turn is broadly defined as “all
10 the undivulged technical information, whether capable of being patented or not, that
11 is necessary for the industrial reproduction of a product or process, directly and under
12 the same conditions.” *Id.* at ¶6.5.

13 117. Because the markup can only be determined with reference to persons
14 performing similar functions, the cost plus and net margin methods require that the
15 taxpayer identify such parties (i.e., comparables). CRA Circular, ¶¶77, 107.

16 **Silver Wheaton’s Business and Control of Silver Wheaton Caymans**

17 118. Silver Wheaton is the world’s first, and largest, precious metals
18 streaming company.

19 119. A precious metals streaming agreement is essentially an option to
20 purchase the future output of a mine. When it enters into a precious metals streaming
21 agreement, Silver Wheaton makes a large up-front payment and in turn receives the
22 right to buy a portion of the mine’s future silver output for a low price. That price is
23 calculated as the average global cost of silver production. Silver Wheaton then earns
24 profits by buying silver at the low price and reselling it to brokers at the market price.
25 Silver Wheaton receives advance notice of silver deliveries, and sells the silver before
26 delivery, such that it never takes title to it except for a moment, if at all, and never
27 takes physical possession of the silver.

28

1 120. Silver Wheaton’s principal operations are conducted by Silver Wheaton
2 Corp., a Canadian company operating out of Vancouver, Canada. Silver Wheaton
3 also holds a subsidiary based in the Caymans Islands, Silver Wheaton Caymans. The
4 Caymans Islands do not impose taxes on income companies earn outside of the
5 Cayman Islands.

6 121. Nearly all of Silver Wheaton’s activities are conducted by Silver
7 Wheaton Canada. Silver Wheaton Canada identifies potential streaming opportunities
8 throughout the world, and then analyzes them for profitability using complex models
9 that consider silver price, various discount rates, the cost of capital, and numerous
10 other factors. Silver Wheaton Canada also analyzes whether these transactions are
11 sufficiently safe from political, geological, and operational risks, among others,
12 requiring the well-seasoned judgment of professionals in a variety of fields, including
13 geology, mining engineering, the mining business, and finance.²⁵ Silver Wheaton
14 Canada personnel then approach the mines and negotiate complicated streaming
15 agreements, relying on the skills and credibility they have built up over decades-long
16 careers as business persons in Vancouver and in the mining industry. Silver Wheaton
17 Canada negotiates for and secures hundreds of millions of dollars of financing. Silver
18 Wheaton Canada’s board of directors considers, in lengthy meetings, each of these
19 agreements, asking pointed questions, weighing the advice of financial and other
20 professionals retained to advise it, and occasionally changing the terms of
21 agreements. [REDACTED]

22
23 _____
24 ²⁵ Silver Wheaton Canada has rejected a host of potential Streaming Agreements for a
25 variety of reasons, including: political risk (San Cristobal); poor operating partner
26 (Aranzazu); high permitting risk (Revett); economic viability of the mine (Atacocha);
27 concerns regarding geological interpretation, resource estimates, metallurgy or mine
28 planning (Wolverine); and low exploration potential (El Mochito). Deposition of
Bettina Charpentier in Canadian Tax Appeal (“Charpentier Canada Testimony”), as
filed with the Tax Court of Canada on August 4, 2017, Response to Undertaking
487.

1 [REDACTED] When an agreement is signed, Silver Wheaton Canada
2 conducts ongoing due diligence with the mines, ensuring that the mine performs as
3 promised. [REDACTED]

4 [REDACTED]

5 122. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 123. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 124. Silver Wheaton Canada thereby avoided paying more than two hundred
24 million dollars in Canadian income taxes in the period between 2005 and 2010.

25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 125. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 126. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 (a) *Silver Wheaton Caymans’s Employees Did Not Have Serious*
17 *Responsibilities*

18 127. In respect of each taxation year during the Period, all substantive
19 strategic, managerial and operational direction relating to the activities of Silver
20 Wheaton Caymans was provided by Silver Wheaton Canada. The Annual
21 Information Forms (“AIF”)²⁷ filed by Silver Wheaton Canada during the Period
22 indicated that Silver Wheaton had 18 employees by 2008 (as per the AIF for the
23 period ending December 31, 2007) and later 24 employees (as per the AIF for the
24 period ending December 31, 2010). Of these employees, at most six were Silver
25 Wheaton Caymans employees.

26 _____
27 ²⁷ An Annual Information Form in Canada is similar to the Form 10-K annual report
28 that is filed with the U.S. Securities & Exchange Commission, except that it doesn’t
include audited financial statements, which are filed separately.

1 128. FE1 reports that none of the employees of Silver Wheaton Caymans had
2 meaningful, unfettered strategic or managerial decision-making authority. The
3 documents produced in this case confirm FE1's account.

4 129. Until November 2005, Silver Wheaton Caymans' entire operations were
5 conducted by a third-party contractor for a flat rate of \$2,000/month.

6 130. In November 2005, Silver Wheaton hired [REDACTED] to conduct
7 Silver Wheaton Caymans's silver selling activities. [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 131. In July 2006, Silver Wheaton hired [REDACTED] to manage Silver
13 Wheaton Caymans's accounting. [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 132. [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 133. In August 2007, Silver Wheaton Canada offered [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28

1 134. Silver Wheaton Caymans's employee levels remained substantially
2 similar through the end of 2010.

3 135. [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 136. FE1 states that she observed and/or was informed by her Silver Wheaton
7 Caymans superiors that all material operational and strategic decisions in respect of
8 Silver Wheaton Caymans were subject to the direction and approval of officers or
9 employees of Silver Wheaton Canada, and substantially all material agreements to
10 which Silver Wheaton Caymans was a party were drafted by, and executed with the
11 required approval of, officers or representatives of Silver Wheaton Canada. FE1
12 states that, with the exception of those that performed clerical or local compliance
13 tasks, all employees of Silver Wheaton Caymans reported to, or accepted instructions
14 from, officers or employees of Silver Wheaton Canada.

15 137. [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 138. The Silver Wheaton Caymans employees lacked the professional
24 experience and the training necessary to identify the commercial opportunities
25 purportedly sought by Silver Wheaton Caymans and to negotiate the relevant
26 arrangements, as well as the ability to administer the complicated agreements and
27 activities that were purportedly executed by Silver Wheaton Caymans during the
28 Period.

1 139. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 140. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 141. [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 142. [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 143. FE1 said that when Tatarkin visited mines and clients he did so together
4 with Silver Wheaton Canada employees, which is confirmed by the documents Silver
5 Wheaton produced. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 144. Tatarkin told FE1 that his participation in negotiations of Silver
16 Wheaton Caymans’s streaming contracts and other material agreements was “on
17 behalf of [Silver Wheaton] as a whole and not just [Silver Wheaton Caymans].” [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED] And FE1 stated that she never saw

26 anyone at the Silver Wheaton Caymans office preparing the contract documents, and

27 she believes “they were prepared in the [Silver Wheaton] corporate office in Canada.”

28 [REDACTED]

1 145. On a number of occasions, usually when FE1 was making a request of
2 Tatarkin for something that needed his financial approval, Tatarkin told FE1 that he
3 was not his own boss. FE1 recalled how Tatarkin put it to her: “You report to Brad,
4 Brad reports to me, I, in turn, am not my own person.”

5 146. Tatarkin made it clear to FE1 that he “had to report to Randy
6 [Smallwood]” regarding any financial decisions that were outside Tatarkin’s pre-
7 approved authority.

8 147. Silver Wheaton Caymans was not regarded by Silver Wheaton Canada
9 or by Silver Wheaton Caymans employees as an entity or enterprise separate and
10 distinct from Silver Wheaton Canada. FE1 reports that Silver Wheaton Caymans was
11 simply viewed as a branch of Silver Wheaton Canada by employees of Silver
12 Wheaton Canada and Silver Wheaton Caymans. FE1 states that staff at Silver
13 Wheaton “always referred to the Cayman office as a branch office to [Silver Wheaton
14 Canada].” The content of the Tartarkin Resume similarly refers to Silver Wheaton
15 Caymans as “the Cayman Islands office for Silver Wheaton Corp.” and as “the
16 Cayman Islands based operating arm of Silver Wheaton.” [REDACTED]

17 [REDACTED]
18 [REDACTED]

19 148. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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[REDACTED]

149. [REDACTED]

[REDACTED]

150. [REDACTED]

151. [REDACTED]

[REDACTED]

152. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

153. [REDACTED]

[REDACTED]

[REDACTED]

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1 154. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 155. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 156. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 157. [REDACTED]
14 158. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 159. [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 160. [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 161. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 162. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 163. Indeed, Silver Wheaton Caymans' board members, unlike Silver
26 Wheaton Canada's, did not sign any agreements to become directors or even accept
27 their position in writing. Charpentier Canada Testimony, Response to Undertakings
28 49, 55.

1 164. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 165. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 166. [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 167. [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 168. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 169. Likewise, Silver Wheaton Canada's Board approved entering into a
20 Streaming Agreement with Farallon Resources Ltd. on March 27, 2008. Silver
21 Wheaton Caymans then approved the Farallon Streaming Agreement on May 7,
22 2008. [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 170. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 171. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
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15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 172. [REDACTED]
21 [REDACTED]
22 [REDACTED]
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24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 173. [REDACTED]
28 [REDACTED]

1 [REDACTED]
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3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 174. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 (c) *Silver Wheaton Canada Conducted Substantially All of Silver Wheaton*
13 *Caymans's Activities*

14 175. The 2006 Annual Report of Silver Wheaton Canada emphasized the
15 significance of the “Silver Wheaton brand name” to the business operations of the
16 Silver Wheaton corporate group during the Period. There is no evidence to indicate
17 that any reputational or brand-related intellectual property or any material,
18 sophisticated know-how that was utilized by Silver Wheaton Caymans during the
19 Period was internally developed by Silver Wheaton Caymans, rather than obtained
20 from Silver Wheaton Canada.

21 176. All streaming contracts to which Silver Wheaton Caymans was a party
22 were identified, originated, and secured by the efforts of Silver Wheaton Canada. All
23 commercial leads, introductions, opportunities and agreements were pursued and
24 executed by, or at the direction of, Silver Wheaton Canada and were provided to
25 Silver Wheaton Caymans without consideration.

26 177. In addition to performing all material commercial functions for Silver
27 Wheaton Caymans, Silver Wheaton Canada also assumed all material financial and
28 contractual risks on behalf of Silver Wheaton Caymans during the Period, whether

1 through the funding of agreements to which Silver Wheaton Caymans was a party in
2 respect of future streaming rights, or through guarantees under agreements to which
3 Silver Wheaton Caymans was a party. FE1 states that Silver Wheaton Caymans
4 functioned as a conduit for large amounts of money passing from the Silver Wheaton
5 corporate office in Vancouver to the mines through Silver Wheaton Caymans in one
6 direction and money from silver sales flowing back through Silver Wheaton Caymans
7 to Silver Wheaton Canada.

8 178. FE1 stated that Silver Wheaton Caymans kept a very small percentage of
9 the revenue and income it earned in its bank accounts, passing most of it to the Silver
10 Wheaton corporate office accounts.

11 179. Beginning in March 2008 when the Silver Wheaton Caymans Islands
12 office opened, FE1 began to wire transfer large sums of money from the Silver
13 Wheaton Caymans office's revenue accounts to Silver Wheaton corporate
14 headquarters in Vancouver.

15 (d) *Silver Wheaton treated Silver Wheaton Caymans as a mere pit stop for*
16 *its money*

17 180. Silver Wheaton treated Silver Wheaton Caymans as a mere pit stop for
18 its cash on its way to its final destination. [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 181. [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 182. [REDACTED]
27 [REDACTED]
28 [REDACTED]

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[REDACTED]

183. [REDACTED]

184. Silver Wheaton Canada also guaranteed certain obligations of Silver Wheaton Caymans, such as the Silver Purchase Agreement among Silver Wheaton Canada, Silver Wheaton Caymans, Barrick International Bank Corp., and Barrick Gold Corporation, dated September 8, 2009. In the absence of any independent assets, any default by Silver Wheaton Caymans in respect of such guaranteed obligations would also be borne by Silver Wheaton Canada.

185. Ultimately, no third party would have contracted independently with Silver Wheaton Caymans, absent its wholly-owned relationship with Silver Wheaton Canada. Absent the efforts and involvement of Silver Wheaton Canada in securing and funding streaming agreements and managing and directing the activities that were undertaken in the name of Silver Wheaton Caymans, Silver Wheaton Caymans would have had no operations or revenue during the Period.

Silver Wheaton Consciously Violated Transfer Pricing Rules

(a) Silver Wheaton Was Aware it Violated Transfer Pricing Rules

186. Throughout the Period:

- (i) the Transfer Pricing Rules were well established,
- (ii) by virtue of (A) the detailed publications issued by the CRA prior to, and during, the Period, including the CRA Circular, ten separate CRA Transfer Pricing Memoranda, and additional materials posted on the CRA’s website, and (B) frequent

1 seminars and publications on transfer pricing issues released by leading industry
2 groups in Canada, including the Canadian Tax Foundation, the interpretation and
3 assessment practices of the CRA with respect to the application of the Transfer
4 Pricing Rules were well-known to all commercial enterprises in Canada, including
5 Defendants, and

6 (iii) the T106 transfer pricing information returns that Canadian corporations
7 were obligated to file with the CRA in respect of any transaction with a Related Non-
8 Resident (as described in more detail below) clearly demanded the provision of
9 detailed transfer pricing information in respect of the transaction.

10 187. Silver Wheaton Canada was repeatedly made aware of its reporting and
11 compliance obligations under the Transfer Pricing Rules in the course of completing
12 its annual tax filings. The second page of the general corporation income tax return
13 that Silver Wheaton Canada was required to file each year posed the express question
14 whether Silver Wheaton Canada “had any non-arm’s length transactions with a non-
15 resident” during the year. If the answer was “yes,” Silver Wheaton Canada was
16 directed to file a special T106 Transfer Pricing Information Return (a “T106 Return”)
17 with the CRA.

18 188. The circumstances under which a taxpayer is required to file a T106
19 Return are set out in section 233.1 of the Tax Act. Subsection 233.1(2) of the Tax
20 Act provides that a person who is resident in Canada (a “Reporting Person”) is
21 required to file an information return (i.e., a T106 Return) in respect of each non-
22 resident person with whom the Reporting Person does not deal at arm’s length in
23 respect of all “reportable transactions” with the non-resident in a year. Subsection
24 233.1(1) of the Tax Act generally defines a “reportable transaction” as a transaction
25 or series of transactions that relate in any manner whatever to a business carried on
26 by a Reporting Person in a taxation year.²⁸ Except for a de minimis exception that

27 _____
28 ²⁸ For these purposes, a “transaction” is defined expansively as including an arrangement or event.

1 applies where the total fair market value of all property or services relating to all
2 “reportable transactions” of a Reporting Person (and certain other non-arm’s length
3 persons) for a particular taxation year does not exceed CDN\$1 million, the obligation
4 to file a T106 Return is generally absolute.

5 189. The T106 Return expressly requires a Canadian taxpayer to report
6 arrangements involving the provision of all types of Property, including intangible
7 property, to a Related Non-Resident, regardless of whether consideration is payable
8 by the non-resident for such property. The T106 Return also requires taxpayers to
9 indicate whether they have prepared or obtained contemporaneous documentation in
10 respect of all transactions with a Related Non-Resident in respect of each year.

11 190. A knowledgeable authorized officer of Silver Wheaton Canada was
12 required to review, ensure the accuracy of, and sign the T106 Return.

13 191. The CRA’s Audit Manual underscores the significance that the CRA
14 placed on the T106 Return during the Period. The Audit Manual indicated that the
15 T106 Return “was introduced in 1988 to combat abuses in transfer pricing and
16 provide the CRA with information on non-arm’s length transactions with non-
17 residents.” The Audit Manual also contained a special “grid” of “tax havens,”²⁹ and
18 the Audit Manual expressly stipulated that “the T106 return, as well as its related
19 database, are key audit screening and planning tools for tax haven issues.”

20 192. Both Deloitte and PwC specifically called Silver Wheaton’s attention to
21 the requirements to maintain contemporaneous documentation, and Silver Wheaton
22 falsely claimed to have done so.

23 193. [REDACTED]
24 [REDACTED]
25 [REDACTED]

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27 _____
28 ²⁹ Although protected from disclosure, the “grid” is widely believed to have included the Cayman Islands.

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194. [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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196. [REDACTED]

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197. [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

198. [REDACTED]

[REDACTED]

199. [REDACTED]

[REDACTED]

(b) Silver Wheaton Canada Faced Daunting Odds in the CRA Audit

200. If the commercial activities of Silver Wheaton Canada in respect of the Period were audited by the CRA as they related to the interactions between Silver Wheaton Canada and Silver Wheaton Caymans, there was no reasonable basis to believe that the CRA would not seek to (i) ascribe arm’s length transfer prices to the Property provided by Silver Wheaton Canada to Silver Wheaton Caymans during the Period, (ii) include such additional revenue amounts in the computation of the taxable income of Silver Wheaton Canada in respect of the relevant taxation years, and (iii) reassess Silver Wheaton Canada for additional income tax payable, computed on the basis of the increased taxable income of Silver Wheaton Canada.

201. In proceedings before the Tax Court of Canada, the taxpayer generally bears the burden of “demolishing” each of the factual assumptions made by the

1 Minister of National Revenue (Canada) in support of a reassessment.³⁰ There is no
2 material basis upon which Silver Wheaton Canada could successfully establish that a
3 person dealing at arm's length with Silver Wheaton Caymans would have been
4 willing to provide the Property provided by Silver Wheaton Canada to Silver
5 Wheaton Caymans during the Period for nominal consideration.

6 202. Accordingly, it was readily apparent at all material times that it was
7 clearly more likely than not, and indeed nearly certain, that, if Silver Wheaton
8 Canada was subject to a comprehensive tax audit by the CRA, (i) the income tax
9 payable by Silver Wheaton Canada would be reassessed on the basis of an increased
10 level of taxable income that included additional revenue from the provision of the
11 Property to Silver Wheaton Caymans, computed on the basis of arm's length transfer
12 prices, and (ii) any attempt to appeal any such reassessments to the Canadian courts
13 would not be entirely successful.

14 203. The assessment practices of the CRA during the Period and during the
15 Class Period were consistent with the statements made by the agency in its external
16 publications. There was information in the market in Canada, obvious and known to
17 Silver Wheaton Canada senior officers beginning in 2009, that the CRA was
18 prioritizing audits of Canadian companies with large foreign income in low tax
19 jurisdictions, particularly in the natural resources industry. That year saw public
20 announcement of the well-known tax transfer pricing case involving Cameco
21 Corporation ("Cameco"). With basic facts mirroring those here, the CRA issued a
22 sizeable transfer pricing reassessment of Cameco during the Period in a highly
23 publicized case that was principally premised on the assertion that Cameco had failed
24 to adhere to the Transfer Pricing Rules when transacting with a non-resident
25 subsidiary in connection with the purchase and sale of uranium.

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28 ³⁰ See, for example, *Hickman Motors Ltd. v. The Queen*, [1997] 2 S.C.R. 336, 97 D.T.C. 5363.

1 204. In the Cameco case, the CRA undertook an extensive review of the
2 functions performed by Cameco, the risks assumed by Cameco, and the assets used
3 and deployed by Cameco in connection with the subject transactions relative to those
4 of its Swiss subsidiary and asserted, among other things, that all of the material
5 functions and risks associated with the transactions undertaken by the two parties
6 were performed or borne by Cameco. Accordingly, the CRA asserted that all of the
7 profits derived from the activities of Cameco and its Swiss subsidiary should accrue
8 to Cameco and be included in Cameco's income. The CRA founded its
9 reassessments on both the application of the Transfer Pricing Rules, as well as the
10 application of the sham doctrine and subsection 56(2) of the Tax Act.

11 205. The circumstances of the Cameco case and Silver Wheaton Caymans
12 bear broad similarities. In each case, the Canadian corporate parent (i.e., Cameco and
13 Silver Wheaton Canada) provided significant Property to a Related Non-Resident
14 subsidiary (Swiss subsidiary, Silver Wheaton Caymans) at prices that were materially
15 less than the transfer prices that would have been mutually agreeable to parties
16 dealing with one another at arm's length. In each case, the Canadian corporate parent
17 wished to divert business opportunities and expected future profits to an entity
18 situated outside of Canada that would not be directly subject to Canadian income tax
19 filing and payment obligations. In each case, substantive commercial functions of
20 value were performed by the corporate parent for the benefit of the Related Non-
21 Resident subsidiary without material compensation.

22 206. Silver Wheaton Canada closely monitored developments in the Cameco
23 case, and understood the import of a ruling against Cameco on its own fortunes vis-à-
24 vis the CRA. [REDACTED]

25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
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3 [REDACTED]
4 [REDACTED]
5 207. That Silver Wheaton Canada was an extremely large and profitable
6 entity and the vast majority of its profits were shifted to Silver Wheaton Caymans,
7 which was subject to zero income tax, would have been a red flag for the CRA to
8 initiate a transfer pricing audit, as the CRA had with Cameco. Thus, Defendants
9 knew that Silver Wheaton Canada's tax position vis-à-vis Silver Wheaton Caymans
10 was indefensible and without any reasonable basis and it was probable, possible, and
11 indeed highly likely to result in a future tax assessment for past due income taxes,
12 penalties and interest in material amounts.

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
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17 208. [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 209. Silver Wheaton Canada hired Deloitte as its auditor and, initially, its tax
21 consultant. Yet, though it had advised Silver Wheaton on its tax structure, Deloitte
22 was initially sharply critical of Silver Wheaton's tax position.

23 210. [REDACTED]
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13 224. [REDACTED]
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1 229. [REDACTED]
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8 240. [REDACTED]
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25 243. [REDACTED]
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1 244. [REDACTED]
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11 245. [REDACTED]
12 [REDACTED]

13 (e) *Deloitte Ignores Additional Obvious Signs of Fraud*

14 246. [REDACTED]
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20 [REDACTED].

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**All Defendants Were Aware That There Was A Substantial Risk That the
CRA Would Invalidate Silver Wheaton's Tax Position**

[Redacted]

254. [Redacted]

255. [Redacted]

256. [Redacted]

257. [Redacted]

258. [Redacted]

259. [Redacted]

1 260. [REDACTED]

2 [REDACTED]

3 [REDACTED]

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5 261. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

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11 262. [REDACTED]

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17 263. [REDACTED]

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23 265. [REDACTED]

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27 266. [REDACTED]

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11 269. [REDACTED]
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13 270. [REDACTED]
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16 271. [REDACTED]
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10 [REDACTED]

11 (b) *The CRA Begins an Audit of Silver Wheaton's International*
12 *Transactions*

13 272. In October 2009, the CRA announced to Silver Wheaton that it would
14 audit its international transactions from 2005-2010. [REDACTED]
15 [REDACTED]

16 273. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
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24 274. [REDACTED]
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277. Under Canadian tax law, the taxpayer must point to a bona fide non-tax reason for the transactions. Thus, if Silver Wheaton disclosed to the CRA that the true purpose of Silver Wheaton Caymans was to reduce Silver Wheaton's tax burden, Silver Wheaton would automatically be reassessed.

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279. [REDACTED]

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280. [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

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281. [REDACTED]

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282. [REDACTED]

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9 284. [REDACTED]
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12 285. [REDACTED]
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1 287. [REDACTED]
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4 288. [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 289. The Brown Script was generally circulated to Silver Wheaton
8 employees. Charpentier Canada Testimony, Response to Undertaking 104.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 290. [REDACTED]
13 [REDACTED]
14 [REDACTED]
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16 291. [REDACTED]
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18 292. [REDACTED]
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21 [REDACTED]

22 293. [REDACTED]
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25 [REDACTED]

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5 [REDACTED]

6 294. [REDACTED]
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13 [REDACTED]

14 295. [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 296. Along with Tatar kin, Charpentier “grilled” FE1 and other employees in
18 practice sessions to make sure they were answering questions professionally and in a
19 way that would not raise suspicion.

20 297. “From my experience with other companies, that was not the first time
21 being questioned (by officials), but it was the first time a company had me practice
22 what to say and they told you what they wanted you to say,” FE1 said.

23 298. She recalled that four Canadian government officials set up in the office
24 boardroom and each employee went in for a private interview. After each interview,
25 the Canadian government officials met with Charpentier and Tatar kin to discuss the
26 employee’s answers.

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1 299. FE1 said the government officials were there to determine if the Cayman
2 Islands office was a separate entity from the Vancouver corporate headquarters and
3 also to review the taxes the company filed.

4 300. “They wanted to confirm that these two companies, Silver Wheaton in
5 Caymans and Silver Wheaton (corporate) was not one operation, that they were two
6 separate entities,” she said. “And that the income they were making was applied
7 correctly on their taxes. That the amount they declared on their taxes was correct.”

8 301. The functional interviews were devastating to Silver Wheaton.

9 302. CRA officials told FE1 “We’re here because we feel Silver Wheaton had
10 not been paying their taxes, and we want to see if you know or you saw anything to
11 help us to confirm this.”

12 303. When the officials asked her directly if she had seen anything that raised
13 red flags in her mind, she said no. But she noted that Tatarkin and Charpentier later
14 expressed displeasure with her that her facial expression had not assured the officials
15 that she was being fully truthful.

16 304. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
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22 306. [REDACTED]
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1 307. [REDACTED]
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6 308. [REDACTED]
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11 309. [REDACTED]
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21 311. [REDACTED]
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(f) *The Noose Tightens*

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25 317. [REDACTED]
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1 318. [REDACTED]

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4 319. [REDACTED]

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9 320. [REDACTED]

10 [REDACTED]

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12 321. [REDACTED]

13 [REDACTED]

14 322. [REDACTED]

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23 323. [REDACTED]

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9 325. [REDACTED]
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25 328. [REDACTED]
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27 329. [REDACTED]
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8 330. [REDACTED]
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10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 331. [REDACTED]
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19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 **Deloitte Conducted a Pretend Audit of Silver Wheaton’s Tax Positon,**
25 **Ignoring IFRS and GAAP Requirements**

26 332. [REDACTED]
27 333. [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 334. Deloitte was well aware that the risk of misstatement of Silver
4 Wheaton’s tax liabilities was one of the most serious audit risks. Yet eager to
5 preserve its relationship, and hired to advocate on Silver Wheaton’s behalf before the
6 CRA, Deloitte abandoned its role as auditor and allowed Silver Wheaton to avoid
7 even disclosing the risk that the CRA would invalidate its transfer pricing tax
8 position.

9 335. For each of the 2012, 2013, and 2014 audits, Deloitte provided
10 unqualified audit opinions for Silver Wheaton stating the consolidated financial
11 statements present fairly, in all material respects, the Company’s financial position,
12 financial performance, and cash flows.

13 (a) *Auditing Standards*

14 336. PCAOB auditing standards require auditors to: obtain sufficient
15 evidence to afford a reasonable basis for the opinion on the audited financial
16 statements and document the audit work completed.³⁵

17 337. PCAOB Auditing Standard No. 3 – Audit Documentation states: “Audit
18 documentation must contain sufficient information to enable an experienced auditor,
19 having no previous connection with the engagement: [t]o understand the nature,
20 timing, extent, and **results of the procedures performed, evidence obtained, and**
21 **conclusions reached.**” Accordingly, if Deloitte’s audit working papers do not record
22 a procedure as having been performed, then the procedure was not performed.

23 338. In addition, PCAOB AU Section 333 Management Representations
24 states: “During an audit, management makes many representations to the auditor,
25 both oral and written, in response to specific inquiries or through the financial
26 statements. Such representations from management are part of the evidential matter

27 _____
28 ³⁵ PCAOB AU Section 150 – Generally Accepted Auditing Standards, Standards of Field Work

1 the independent auditor obtains, but **they are not a substitute for the application of**
2 **those auditing procedures necessary to afford a reasonable basis for an opinion**
3 **regarding the financial statements under audit.”**

4 339. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 340. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

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16 [REDACTED]

17 [REDACTED]

18 341. [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 **(b) 2011 Audit**

22 342. [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

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1 [REDACTED]
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3 343. [REDACTED]
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15 344. [REDACTED]
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18 345. [REDACTED]
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20 346. [REDACTED]
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4 347. [REDACTED]
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12 348. [REDACTED]
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[REDACTED]

(b) 2012 Audit

350. [REDACTED]

351. [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 352. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 (c) *2013 Audit*

11 353. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 354. [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

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19 [REDACTED]

20 355. [REDACTED]

21 [REDACTED]

22 [REDACTED]

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24 356. [REDACTED]

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[Redacted text block]

357. [Redacted text]

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358. [Redacted text]

[Redacted text block]

(d) 2014 Audit

359. [Redacted text]

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1 360. [REDACTED]
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12 362. [REDACTED]
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17 363. [REDACTED]
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6 364. [REDACTED]
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14 [REDACTED]

15 **Deloitte’s Violations of its Auditor’s Duty of Independence**

16 ***(a) The revolving door between Silver Wheaton and Deloitte***

17 365. Amy Cheema worked as an auditor for Deloitte or its predecessor from
18 the beginning of her career in 2000 until April 2008. [REDACTED]
19 [REDACTED]

20 366. In April 2008 Cheema took up a position as Director of Financial
21 Reporting & Operations for Silver Wheaton. She remained in this position until
22 August 2009, when she returned to Deloitte.

23 367. While at Silver Wheaton Canada, Cheema [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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6 368. [REDACTED]
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13 369. [REDACTED]
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21 370. [REDACTED]
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27 371. [REDACTED]
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3 [REDACTED]
4 [REDACTED]

5 372. [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 373. Cheema was not the first alumnus of Deloitte's Vancouver office to join
9 Silver Wheaton Canada. CFO Nolan Watson (2005-2008) had worked at Deloitte's
10 Vancouver office for two years, [REDACTED], immediately
11 before joining Silver Wheaton Canada. Likewise, Defendant Barnes, Silver Wheaton
12 Canada's CEO until 2011, was an accountant at Deloitte from 1980 through 1995,
13 and was Director of Deloitte Vancouver's audit practice from 1983 to 1990.

14 374. In August 2009, Cheema left Silver Wheaton Canada to return to
15 Deloitte. [REDACTED]

16 375. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 376. [REDACTED]
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23 [REDACTED]
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26 377. [REDACTED]
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5 378. [REDACTED]
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15 379. [REDACTED]
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17 [REDACTED]
18 [REDACTED]
19 380. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 381. Public Company Accounting Oversight Board (PCAOB) ET Section 101
24 provides auditors with guidance on Independence. ET 101.02 provides an
25 “Application of the Independence Rules to Covered Members Formerly Employed by
26 a Client or Otherwise Associated With a Client,” which states:

27 An individual who was formerly (i) employed by a client or (ii)
28 associated with a client as a(n) officer, director, promoter, underwriter,

1 voting trustee, or trustee for a pension or profit-sharing trust of the client
2 would impair his or her firm's independence if the individual—

3 Participated on the **attest engagement team** or was an **individual**
4 **in a position to influence the attest engagement** for the client when
5 the **attest engagement** covers any period that includes his or her former
6 employment or association with that client; or []
7 (emphasis added).

8 382. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 [REDACTED]
13 383. In October 2009, Silver Wheaton was informed of the CRA Audit.

14 384. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 385. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 386. [REDACTED]
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16 389. [REDACTED]
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[REDACTED]

[REDACTED]s with the CRA.

(d) If Deloitte Acknowledged That It Was More Likely Than Not That Silver Wheaton’s Tax Position Would Not Be Upheld, It Would Have To Withdraw From The Audit

390. Glenn Ives and Brad Gordica were Deloitte audit and tax partners, respectively. Ives and Gordica advised Silver Wheaton on its transfer pricing tax structure and the structuring of Silver Wheaton’s tax transactions. In particular, beginning in April 2004, Ives and Gordica “provided tax advice [to Silver Wheaton’s predecessor] in planning the structure [of Silver Wheaton’s first Streaming Agreement].” Charpentier Canada Testimony, pp. 847-855, and Response to Undertakings 270, 271. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

391. PCAOB Rule 3522 provides, in relevant part:

A registered public accounting firm is not independent of its audit client if the firm, or any affiliate of the firm, during the audit and professional engagement period, provides any non-audit service to the audit client related to marketing, planning, or opining in favor of the tax treatment of, a transaction [if]

* * * * *

(b) **[the] Tax Position Transaction[-]** that was initially recommended, directly or indirectly, by the registered public accounting firm and a significant purpose of which is tax avoidance, unless the proposed tax treatment is at least more likely than not to be allowable under applicable tax laws.

1 392. The “audit and professional engagement period” is defined to include the
2 time beginning when the auditor signs an initial engagement agreement right up until
3 the auditor resigns. PCAOB Rule 3501(a)(iii).

4 393. Ives and Gordica provided non-audit services opining that the tax
5 treatment of Silver Wheaton Caymans’s income would not be subject to Canadian
6 taxes.

7 394. Beginning 2010, Deloitte provided further non-audit services “related to
8 [] opining in favor of the treatment of [] a transaction,” [REDACTED]

9 [REDACTED]
10 395. “A significant purpose” [REDACTED] of Silver
11 Wheaton’s tax structure is tax avoidance. In addition, through Ives and Gordica,
12 Deloitte initially recommended Silver Wheaton adopt its transfer pricing tax
13 structure.

14 396. Accordingly, unless it is more likely than not that Silver Wheaton’s tax
15 position will be upheld, Deloitte is not independent of Silver Wheaton.

16 397. If Deloitte is not independent of Silver Wheaton, it cannot issue an
17 opinion on Silver Wheaton’s financial statements. AU Section 220.01-.02.
18 Accordingly, unless Deloitte finds that it is more likely than not that Silver
19 Wheaton’s tax position will be upheld, then it cannot serve as Silver Wheaton’s
20 auditor.

21 398. Further, in order to meet Rule 3522, Deloitte must “establish, based on
22 an analysis of the pertinent facts and authorities [which analysis is objectively
23 reasonable] that there is a greater than 50-percent likelihood that the tax treatment of
24 the transaction would, if challenged, be upheld.” PCAOB Release No. 2004-014, at
25 28-29. [REDACTED]

26 [REDACTED]

27
28

1 IFRS are accounting principles that are substantially similar to U.S. GAAP and
2 Canadian GAAP.

3 406. Under U.S. GAAP and Canadian GAAP, as well as under IFRS, an
4 uncertain tax position liability is generally defined as a present or possible obligation
5 that arises from past events in which there is uncertainty as to the probability that the
6 obligation will result in an outflow of resources, or uncertainty as to the amount of
7 the outflow.

8 407. As of March 31, 2011, U.S. GAAP (and Canadian GAAP) required that
9 an issuer record the existence of an uncertain tax position liability in the financial
10 statements if that liability was “more likely than not” to be incurred. ASC 740. Silver
11 Wheaton stated in its 2010 Annual Report, at page 71, that it adopted ASC 740 with
12 regards to accounting for uncertainty in income taxes.

13 408. In applying ASC 740 to determine whether a liability must be recorded
14 for its tax position under Transfer Pricing Rules concerning profits earned by Silver
15 Wheaton Caymans, Silver Wheaton was first required to assume that the CRA would
16 audit its transfer pricing position, and then to determine whether it was “more likely
17 than not” (i.e. 51% or higher likelihood”) that Silver Wheaton’s transfer pricing tax
18 position violated the CRA Transfer Pricing Rules, and whether the CRA would assess
19 Silver Wheaton additional income taxes, penalties and interest for the years 2005-
20 2010.

21 409. IFRS, IAS 37 and IAS 12, the applicable accounting principles for
22 uncertain tax positions for Silver Wheaton from fiscal 2011 through 2015, is similar
23 to ASC 740. Under IFRS 37 and 12, Silver Wheaton was required to recognize a tax
24 liability for income taxes based on its transfer pricing tax position for shifting income
25 from Silver Wheaton Canada to Silver Wheaton Caymans, if it was “more likely than
26 not” (i.e. 51% or higher likelihood”) that Silver Wheaton’s transfer pricing tax
27 position violated CRA Transfer Pricing Rules and that the CRA would assess Silver
28 Wheaton additional income taxes for the years 2005-2010.

1 410. Even if, hypothetically, Silver Wheaton was not required to recognize
2 and record an uncertain tax position liability as being “more likely than not” (as
3 detailed above), which it was, IFRS 12 and IFRS 37[¶]86, still mandated that Silver
4 Wheaton disclose in the notes to its financial statements the existence of the uncertain
5 tax position liability resulting from its dealings with Silver Wheaton Caymans
6 because the chance of being assessed the income tax was not “remote.” Under 37[¶]86,
7 Silver Wheaton was therefore required to disclose (a) an estimate of the dollar
8 amount of the uncertain tax position liability, (b) an indication of the uncertainties
9 relating to the amount or timing of any outflow; and (c) the possibility of any
10 reimbursement.

11 411. The egregiousness of Silver Wheaton’s tax position, and the probability
12 the CRA would assess additional income taxes when Silver Wheaton was audited, is
13 exemplified by the CRA’s determination that “the transfer pricing provisions of the
14 Act relating to income earned by the Company’s foreign subsidiaries outside of
15 Canada should apply such that the income of Silver Wheaton subject to tax in Canada
16 should be increased by an amount equal to *substantially all of the income earned*
17 *outside of Canada by the Company’s foreign subsidiaries.*” [emphasis added].

18 412. Thus, the CRA determined that Silver Wheaton didn’t just make a small
19 mistake in its transfer pricing tax position. The CRA found the entirety of Silver
20 Wheaton’s tax position to be wholly unjustified and unlawful.

21 413. The lack of any reasonable basis for Silver Wheaton’s transfer pricing
22 tax position is further evidenced by the fact that CRA assessed Silver Wheaton a
23 penalty equal to 10% of the income that was unlawfully not declared. This penalty is
24 required to be assessed where the tax payer has not complied with its obligation to
25 file the necessary documentation with its tax returns that the transactions between the
26 Canadian entity and the offshore entity are on arm’s length or fair market value
27 terms.

28

Materially False And Misleading Statements Issued During the Class Period

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414. The Class Period starts on March 30, 2011, when Silver Wheaton filed a Form 40-F for the fiscal year ended December 31, 2010 (the “2010 40-F”) with the SEC, which provided Silver Wheaton’s year-end financial results and position and stated that Silver Wheaton’s internal control over financial reporting was effective as of December 31, 2010. The 2010 40-F was signed by Defendant Barnes. The 2010 40-F contained signed certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) by Defendants Barnes and Brown, which stated that the financial information contained in the 2010 40-F was accurate and disclosed any material changes to Silver Wheaton’s internal control over financial reporting.

415. The 2010 40-F stated that “The Company prepares its financial statements in accordance with Canadian generally accepted accounting principles which are reconciled to United States generally accepted accounting principles in Note 14 of the audited consolidated financial statements of the Company as of December 31, 2010 and 2009 and for each of the years in the three year period ended December 31, 2010, including the reports of the Independent Registered Chartered Accountants with respect thereto, included as Exhibit 99.2 of this annual report on Form 40-F (the “Audited Financial Statements”).”

416. Exhibit 99.2 of the 2010 40-F contained Silver Wheaton’s financial statements beginning on page 36 with a statement by CEO Barnes and CFO Brown that the financial statements “were prepared by management, which is responsible for the integrity and fairness of the information presented, including the many amounts that must of necessity be based on estimates and judgments. These consolidated financial statements were prepared in accordance with Canadian generally accepted accounting principles (“Canadian GAAP”) and include a footnote providing a reconciliation from Canadian GAAP to accounting principles generally accepted in the United States (“US GAAP”).

1 417. The financial statements contained balance sheets for fiscal years ended
2 December 31, 2009 and 2010.

3 418. The balance sheets for 2009 and 2010 were false and misleading for
4 omitting to include a then present tax position liability of \$207 million (consisting of
5 \$150 million of unpaid income tax and \$57 million of mandatory penalties, but not
6 including interest). Silver Wheaton's violation of the CRA Transfer Pricing Rules
7 rose from its decision to avoid paying Canadian corporate income tax on \$567
8 million of income by unlawfully shifting Silver Wheaton's income to its subsidiary,
9 Silver Wheaton Caymans, located in the Cayman Islands, a jurisdiction without
10 income taxes.

11 419. Under then operative U.S. GAAP, ASC 740, Silver Wheaton was
12 required to recognize and record a tax position liability of \$207 million if it was
13 "more likely than not" that its transfer pricing tax position with respect to Silver
14 Wheaton's transactions with Silver Wheaton Caymans, specifically Silver Wheaton's
15 provision of property, services, advantages, and other rights to Silver Wheaton, did
16 not conform to CRA Transfer Pricing Rules and would therefore result in the
17 assessment of additional taxes.

18 420. In addition, the 2010 Form 40-F and exhibits thereto were misleading for
19 failing to disclose the existence of the CRA audit of Silver Wheaton's transfer pricing
20 transactions with Silver Wheaton Caymans and Silver Wheaton's transfer pricing tax
21 position as of the date the Form 40-F was filed with the SEC on March 30, 2011.

22 421. According to FE1, in May 2011, the CRA visited the Caymans and
23 began its audit of its transactions with Silver Wheaton to determine if transfer pricing
24 rules were violated and income tax payable. Prior to arrival of CRA auditors, Silver
25 Wheaton sent a team of internal accountants and auditors to Silver Wheaton
26 Caymans's offices to prepare the staff and office for the audit.

27 422. Defendants were aware of the CRA Audit because they were notified of
28 it by ██████████ in October 2009.

1 423. On May 9, August 8, and November 9, 2011, the Company filed Form 6-
2 Ks with the SEC attaching its first, second and third quarter results for the periods
3 ending March 31, June 30, and September 30, 2011 respectively (the “2011 Qs”) each
4 of which was signed by Defendant Smallwood. The 2011 Qs each also contained
5 signed certifications on FORM 52-109F2 by Defendants Smallwood and Brown, who
6 both certified that:

7 2. No misrepresentations: Based on my knowledge, having
8 exercised reasonable diligence, the interim filings do not contain any
9 untrue statement of a material fact or omit to state a material fact
10 required to be stated or that is necessary to make a statement not
11 misleading in light of the circumstances under which it was made, with
12 respect to the period covered by the interim filings.

13 3. Fair presentation: Based on my knowledge, having exercised
14 reasonable diligence, the interim financial report together with the other
15 financial information included in the interim filings fairly present in all
16 material respects the financial condition, financial performance and cash
17 flows of the issuer, as of the date of and for the periods presented in the
18 interim filings.

19 424. The 2011 Qs were false and misleading for the same reasons that the
20 2010 40-F and exhibits thereto were false and misleading, as described above, i.e., for
21 failing to recognize and record \$207 million of income tax position liabilities.

22 425. On March 27, 2012, Silver Wheaton filed a Form 40-F for the fiscal year
23 ended December 31, 2011 (the “2011 40-F”) with the SEC, which provided Silver
24 Wheaton’s year-end financial results and position and stated that Silver Wheaton’s
25 internal control over financial reporting was effective as of December 31, 2011. The
26 2011 40-F was signed by Defendant Smallwood. The 2011 40-F contained signed
27 SOX certifications by Defendants Smallwood and Brown, which stated that the
28

1 financial information contained in the 2011 40-F was accurate and disclosed any
2 material changes to the Company's internal control over financial reporting.

3 426. The 2011 40-F stated that "On January 1, 2011, the Company adopted
4 International Financial Reporting Standards ("IFRS") for financial reporting
5 purposes, using a transition date of January 1, 2010. The Company's audited annual
6 Consolidated Financial Statements for the year ended December 31, 2011, including
7 2010 required comparative information (the "Audited Financial Statements"), have
8 been prepared in accordance with IFRS, as issued by the International Accounting
9 Standards Board ("IASB")."

10 427. Exhibit 99.2 of the 2011 40-F contained an annual report, with Silver
11 Wheaton's audited financial statements beginning on page 37 with a statement by
12 CEO Smallwood and CFO Brown that: "The accompanying consolidated financial
13 statements of Silver Wheaton Corp. ("Silver Wheaton") were prepared by
14 management, which is responsible for the integrity and fairness of the information
15 presented, including the many amounts that must of necessity be based on estimates
16 and judgments. These consolidated financial statements were prepared in accordance
17 with International Financial Reporting Standards ("IFRS") as issued by the
18 International Accounting Standards Board."

19 428. The financial statements contained balance sheets for fiscal years ended
20 December 31, 2011 and 2010.

21 429. The balance sheets for 2010 and 2011 were false and misleading for
22 omitting to include a then present tax position liability of \$207 million (consisting of
23 \$150 million of unpaid income tax and \$57 million of mandatory penalties, but not
24 including interest). Silver Wheaton's violation of the CRA Transfer Pricing Rules
25 rose from its decision to avoid paying Canadian corporate income tax on \$567
26 million of income by unlawfully shifting Silver Wheaton's income to its subsidiary,
27 Silver Wheaton Caymans, located in the Cayman Islands, a jurisdiction without
28 income taxes.

1 430. Under IFRS 12 and 37, Silver Wheaton was required to recognize and
2 record a tax position liability of \$207 million if it was more likely than not that its
3 transfer pricing tax position with respect to Silver Wheaton's transactions with Silver
4 Wheaton Caymans, specifically Silver Wheaton's provision of property, services,
5 advantages, and other rights to Silver Wheaton Caymans, did not conform to CRA
6 Transfer Pricing Rules and would therefore result in the assessment of additional
7 taxes.

8 431. In the alternative, even if the tax position liability was not properly
9 considered to be "more likely than not" under IFRS 12 and 37, and recording a tax
10 position liability was not required (which it was), Silver Wheaton was still obligated
11 to disclose in the footnotes to its 2011 40-F financial statements the existence of a
12 contingent tax position liability in the amount of approximately \$207 million for
13 unpaid income tax and penalties. Silver Wheaton did not include any disclosure of
14 the \$207 million contingent tax position liability, and therefore its financial
15 statements violated IFRS 12 and 37 and were false and misleading.

16 432. The 2011 40-F also included also included an audit report from Deloitte
17 that provided:³⁸

18
19 **Report of Independent Registered Chartered Accountants**

20 To the Board of Directors and Shareholders of Silver Wheaton Corp.

21 We have audited the accompanying consolidated financial statements of
22 Silver Wheaton Corp. and subsidiaries (the "Company"), which
23 comprise the consolidated balance sheets as at December 31, 2011,
24 December 31, 2010 and January 1, 2010, and the consolidated
25 statements of earnings, comprehensive income, cash flows and
26 shareholders' equity for the years ended December 31, 2011 and

27
28 ³⁸ Because of the statute of repose, Plaintiffs only bring claims against Deloitte beginning with its audit report for the year ended December 31, 2012.

1 December 31, 2010, and a summary of significant accounting policies
2 and other explanatory information.

3 **Management's responsibility for the consolidated financial**
4 **statements**

5 Management is responsible for the preparation and fair presentation of
6 these consolidated financial statements in accordance with International
7 Financial Reporting Standards as issued by the International Accounting
8 Standards Board, and for such internal control as management
9 determines is necessary to enable the preparation of consolidated
10 financial statements that are free from material misstatement, whether
11 due to fraud or error.

12 **Auditor's responsibility**

13 Our responsibility is to express an opinion on these consolidated
14 financial statements based on our audits. We conducted our audits in
15 accordance with Canadian generally accepted auditing standards and the
16 standards of the Public Company Accounting Oversight Board (United
17 States). Those standards require that we comply with ethical
18 requirements and plan and perform the audit to obtain reasonable
19 assurance about whether the consolidated financial statements are free
20 from material misstatement.

21 An audit involves performing procedures to obtain audit evidence about
22 the amounts and disclosures in the consolidated financial statements.
23 The procedures selected depend on the auditor's judgment, including the
24 assessment of the risks of material misstatement of the consolidated
25 financial statements, whether due to fraud or error. In making those risk
26 assessments, the auditor considers internal control relevant to the entity's
27 preparation and fair presentation of the consolidated financial statements
28 in order to design audit procedures that are appropriate in the
circumstances. An audit also includes evaluating the appropriateness of
accounting policies used and the reasonableness of accounting estimates
made by management, as well as evaluating the overall presentation of
the consolidated financial statements.

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We believe that the audit evidence we have obtained in our audits is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of Silver Wheaton Corp. and subsidiaries as at December 31, 2011, December 31, 2010 and January 1, 2010 and their financial performance and cash flows for the years ended December 31, 2011 and December 31, 2010 in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board.

Other matter

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2011, based on the criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 22, 2012 expressed an unqualified opinion on the Company's internal control over financial reporting.

/s/ Deloitte & Touche LLP

Independent Registered Chartered Accountants

Vancouver, Canada

March 22, 2012

(emphasis added)

433. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 434. On April 2, 2013, the Company filed a Form 40-F for the fiscal year
9 ended December 31, 2012 (the “2012 40-F”) with the SEC, which provided Silver
10 Wheaton’s year-end financial results and position and stated that Silver Wheaton’s
11 internal control over financial reporting was effective as of December 31, 2012. The
12 2012 40-F was signed by Defendant Smallwood. The 2012 40-F contained signed
13 SOX certifications by Defendants Smallwood and Brown, which stated that the
14 financial information contained in the 2012 40-F was accurate and disclosed any
15 material changes to Silver Wheaton’s internal control over financial reporting.

16 435. The 2012 40-F stated that the Company’s audited annual consolidated
17 financial statements for the year ended December 31, 2012, and related notes thereto,
18 had been prepared in accordance with IFRS, as issued by the International
19 Accounting Standards Board.

20 436. Exhibit 99.2 of the 2012 40-F contained an annual report with Silver
21 Wheaton’s audited financial statements beginning on page 45 with a statement by
22 CEO Smallwood and CFO Brown that: “The accompanying consolidated financial
23 statements of Silver Wheaton Corp. (“Silver Wheaton”) were prepared by
24 management, which is responsible for the integrity and fairness of the information
25 presented, including the many amounts that must of necessity be based on estimates
26 and judgments. These consolidated financial statements were prepared in accordance
27 with International Financial Reporting Standards (“IFRS”) as issued by the
28 International Accounting Standards Board.”

1 437. The financial statements contained balance sheets for fiscal years ended
2 December 31, 2012 and 2011.

3 438. The balance sheets for 2011 and 2012 were false and misleading for
4 omitting to include a then present tax position liability of \$207 million (consisting of
5 \$150 million of unpaid income tax and \$57 million of mandatory penalties, but not
6 including interest). Silver Wheaton's violation of the CRA Transfer Pricing Rules
7 rose from its decision to avoid paying Canadian corporate income tax on \$567
8 million of income by unlawfully shifting Silver Wheaton's income to its subsidiary,
9 Silver Wheaton Caymans, located in the Cayman Islands, a jurisdiction without
10 income taxes.

11 439. Under IFRS 12 and 37, Silver Wheaton was required to recognize and
12 record a tax position liability of \$207 million if it was more likely than not that its
13 transfer pricing tax position with respect to Silver Wheaton's transactions with Silver
14 Wheaton Caymans, specifically Silver Wheaton's provision of property, services,
15 advantages, and other rights to Silver Wheaton Caymans, did not conform to CRA
16 Transfer Pricing Rules and would therefore result in the assessment of additional
17 taxes.

18 440. In the alternative, even if the tax position liability was not properly
19 considered to be "more likely than not" under IFRS 12 and 37, and recording a tax
20 position liability was not required (and it was required), Silver Wheaton was still
21 obligated to disclose in the footnotes to its 2012 40-F financial statements the
22 existence of a contingent tax position liability in the amount of approximately \$207
23 million for unpaid income tax and penalties. Silver Wheaton did not include any
24 disclosure of the \$207 million contingent tax position liability and therefore its
25 financial statements violated IFRS 12 and 37 and were false and misleading.

26 441. The 2012 40-F also included an audit report from Deloitte that provided:
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1 **Report of Independent Registered Chartered Accountants**

2 To the Board of Directors and Shareholders of Silver Wheaton Corp.

3
4 We have audited the accompanying consolidated financial statements of
5 Silver Wheaton Corp. and subsidiaries (the “Company”), which
6 comprise the consolidated balance sheets as at December 31, 2012 and
7 December 31, 2011, and the consolidated statements of earnings,
8 consolidated statements of comprehensive income, consolidated
9 statements of cash flows and consolidated statements of shareholders’
 equity for the years then ended, and a summary of significant accounting
 policies and other explanatory information.

10 **Management's responsibility for the consolidated financial**
11 **statements**

12
13 Management is responsible for the preparation and fair presentation of
14 these consolidated financial statements in accordance with International
15 Financial Reporting Standards as issued by the International Accounting
16 Standards Board, and for such internal control as management
17 determines is necessary to enable the preparation of consolidated
 financial statements that are free from material misstatement, whether
 due to fraud or error.

18 **Auditor's responsibility**

19
20 Our responsibility is to express an opinion on these consolidated
21 financial statements based on our audits. *We conducted our audits in*
22 *accordance with Canadian generally accepted auditing standards and*
23 *the standards of the Public Company Accounting Oversight Board*
24 *(United States)*. Those standards require that we comply with ethical
25 requirements and plan and perform the audit to obtain reasonable
 assurance about whether the consolidated financial statements are free
 from material misstatement.

26 An audit involves performing procedures to obtain audit evidence about
27 the amounts and disclosures in the consolidated financial statements.
28 The procedures selected depend on the auditor's judgment, including the
 assessment of the risks of material misstatement of the consolidated

1 financial statements, whether due to fraud or error. In making those risk
2 assessments, the auditor considers internal control relevant to the entity's
3 preparation and fair presentation of the consolidated financial statements
4 in order to design audit procedures that are appropriate in the
5 circumstances. An audit also includes evaluating the appropriateness of
6 accounting policies used and the reasonableness of accounting estimates
7 made by management, as well as evaluating the overall presentation of
8 the consolidated financial statements.

7 We believe that the audit evidence we have obtained in our audits is
8 sufficient and appropriate to provide a basis for our audit opinion.

9 **Opinion**

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11 *In our opinion, the consolidated financial statements present fairly, in*
12 *all material respects, the financial position of Silver Wheaton Corp.*
13 *and subsidiaries as at December 31, 2012 and December 31, 2011 and*
14 *their financial performance and their cash flows for the years then*
15 *ended in accordance with International Financial Reporting*
16 *Standards as issued by the International Accounting Standards Board.*

15

16 **Other matter**

17 We have also audited, in accordance with the standards of the Public
18 Company Accounting Oversight Board (United States), the Company's
19 internal control over financial reporting as of December 31, 2012, based
20 on the criteria established in *Internal Control—Integrated*
21 *Framework* issued by the Committee of Sponsoring Organizations of the
22 Treadway Commission and our report dated March 21, 2013 expressed
23 an unqualified opinion on the Company's internal control over financial
24 reporting.

23

24 /s/ Deloitte LLP
25 Independent Registered Chartered Accountants
26 Vancouver, Canada
27 March 21, 2013

26

27 (emphasis added)

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1 442. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 443. On March 31, 2014, Silver Wheaton filed a Form 40-F for the fiscal year
13 ended December 31, 2013 (the “2013 40-F”) with the SEC, which provided Silver
14 Wheaton’s year-end financial results and position and stated that Silver Wheaton’s
15 internal control over financial reporting was effective as of December 31, 2013. The
16 2013 40-F was signed by Defendant Smallwood. The 2013 40-F contained signed
17 SOX certifications by Defendants Smallwood and Brown, which stated that the
18 financial information contained in the 2013 40-F was accurate and disclosed any
19 material changes to Silver Wheaton’s internal control over financial reporting.

20 444. The 2013 40-F stated that the Company’s audited annual consolidated
21 financial statements for the year ended December 31, 2013 had been prepared in
22 accordance with IFRS, as issued by the International Accounting Standards Board.

23 445. Exhibit 99.2 of the 2013 40-F contained an annual report with Silver
24 Wheaton’s audited financial statements beginning on page 47 with a statement by
25 CEO Smallwood and CFO Brown that: “The accompanying consolidated financial
26 statements of Silver Wheaton Corp. (“Silver Wheaton”) were prepared by
27 management, which is responsible for the integrity and fairness of the information
28 presented, including the many amounts that must of necessity be based on estimates

1 and judgments. These consolidated financial statements were prepared in accordance
2 with International Financial Reporting Standards (“IFRS”) as issued by the
3 International Accounting Standards Board.”

4 446. The financial statements contained balance sheets for fiscal years ended
5 December 31, 2013 and 2012.

6 447. The balance sheets for 2012 and 2013 were false and misleading for
7 omitting to include a then present tax position liability of \$207 million (consisting of
8 \$150 million of unpaid income tax and \$57 million of mandatory penalties, but not
9 including interest). Silver Wheaton’s violation of the CRA Transfer Pricing Rules
10 rose from its decision to avoid paying Canadian corporate income tax on \$567
11 million of income by unlawfully shifting Silver Wheaton’s income to its subsidiary,
12 Silver Wheaton Caymans, located in the Cayman Islands, a jurisdiction without
13 income taxes.

14 448. Under IFRS 12 and 37, Silver Wheaton was required to recognize and
15 record a tax position liability of \$207 million if it was more likely than not that its
16 transfer pricing tax position with respect to Silver Wheaton’s transactions with Silver
17 Wheaton Caymans, specifically Silver Wheaton’s provision of property, services,
18 advantages, and other rights to Silver Wheaton Caymans, did not conform to CRA
19 Transfer Pricing Rules and would therefore result in the assessment of additional
20 taxes.

21 449. In the alternative, even if the tax position liability was not properly
22 considered to be “more likely than not” under IFRS 12 and 37, and recording a tax
23 position liability was not required (and it was required), Silver Wheaton was still
24 obligated to disclose in the footnotes to its 2013 40-F financial statements the
25 existence of a contingent tax position liability in the amount of approximately \$207
26 million for unpaid income tax and penalties. Silver Wheaton did not include any
27 disclosure of the \$207 million contingent tax position liability and therefore its
28 financial statements violated IFRS 12 and 37 and were false and misleading.

1 450. The 2013 40-F also included an audit report from Deloitte that provided:

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Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of Silver Wheaton Corp.

We have audited the accompanying consolidated financial statements of Silver Wheaton Corp. and subsidiaries (the “Company”), which comprise the consolidated balance sheets as at December 31, 2013 and December 31, 2012, and the consolidated statements of earnings, consolidated statements of comprehensive income, consolidated statements of cash flows and consolidated statements of shareholders’ equity for the years then ended, and a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board, and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. *We conducted our audits in accordance with Canadian generally accepted auditing standards and the standards of the Public Company Accounting Oversight Board (United States).* Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements.

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The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained in our audits is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of Silver Wheaton Corp. and subsidiaries as at December 31, 2013 and December 31, 2012 and their financial performance and their cash flows for the years then ended in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board.

Other Matter

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2013, based on the criteria established in *Internal Control — Integrated Framework (1992)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 20, 2014 expressed an unqualified opinion on the Company's internal control over financial reporting.

/s/ Deloitte LLP

Chartered Accountants
Vancouver, Canada
March 20, 2014

1 (emphasis added)

2 451. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 452. On March 31, 2015, the Company filed a Form 40-F for the fiscal year

14 ended December 31, 2014 (the “2014 40-F”) with the SEC, which provided Silver

15 Wheaton’s year-end financial results and position and stated that Silver Wheaton’s

16 internal control over financial reporting was effective as of December 31, 2014. The

17 2014 40-F was signed by Defendant Smallwood. The 2014 40-F contained signed

18 SOX certifications by Defendants Smallwood and Brown, which stated that the

19 financial information contained in the 2014 40-F was accurate and disclosed any

20 material changes to Silver Wheaton’s internal control over financial reporting.

21 453. The 2014 40-F stated that Silver Wheaton’s audited annual consolidated

22 financial statements for the year ended December 31, 2014 had been prepared in

23 accordance with IFRS, as issued by the International Accounting Standards Board.

24 454. Exhibit 99.2 of the 2014 40-F contained an annual report with Silver

25 Wheaton’s audited financial statements beginning on page 51 with a statement by

26 CEO Smallwood and CFO Brown that: “The accompanying consolidated financial

27 statements of Silver Wheaton Corp. (“Silver Wheaton”) were prepared by

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1 management, which is responsible for the integrity and fairness of the information
2 presented, including the many amounts that must of necessity be based on estimates
3 and judgments. These consolidated financial statements were prepared in accordance
4 with International Financial Reporting Standards (“IFRS”) as issued by the
5 International Accounting Standards Board.”

6 455. The financial statements contained balance sheets for fiscal years ended
7 December 31, 2014 and 2013.

8 456. The balance sheets for 2013 and 2014 were false and misleading for
9 omitting to include a then present tax position liability of \$207 million (consisting of
10 \$150 million of unpaid income tax and \$57 million of mandatory penalties, but not
11 including interest). Silver Wheaton’s violation of the CRA Transfer Pricing Rules
12 rose from its decision to avoid paying Canadian corporate income tax on \$567
13 million of income by unlawfully shifting Silver Wheaton’s income to its subsidiary,
14 Silver Wheaton Caymans, located in the Cayman Islands, a jurisdiction without
15 income taxes.

16 457. Under IFRS 12 and 37, Silver Wheaton was required to recognize and
17 record a tax position liability of \$207 million if it was more likely than not that its
18 transfer pricing tax position with respect to Silver Wheaton’s transactions with Silver
19 Wheaton Caymans, specifically Silver Wheaton’s provision of property, services,
20 advantages, and other rights to Silver Wheaton Caymans, did not conform to CRA
21 Transfer Pricing Rules and would therefore result in the assessment of additional
22 taxes.

23 458. In the alternative, even if the tax position liability was not properly
24 considered to be “more likely than not” under IFRS 12 and 37, and recording a tax
25 position liability was not required (and it was required), Silver Wheaton was still
26 obligated to disclose in the footnotes to its 2014 40-F financial statements the
27 existence of a contingent tax position liability in the amount of approximately \$207
28 million for unpaid income tax and penalties. Silver Wheaton did not include any

1 disclosure of the \$207 million contingent tax position liability and therefore its
2 financial statements violated IFRS 12 and 37 and were false and misleading.

3 459. The 2014 40-F also included an audit report from Deloitte that provided:
4

5 **Report of Independent Registered Public Accounting Firm**

6 To the Board of Directors and Shareholders of Silver Wheaton Corp.

7
8 We have audited the accompanying consolidated financial statements of
9 Silver Wheaton Corp. and subsidiaries (the “Company”), which
10 comprise the consolidated balance sheets as at December 31, 2014 and
11 December 31, 2013, and the consolidated statements of earnings,
12 consolidated statements of comprehensive income, consolidated
13 statements of cash flows, and consolidated statements of shareholders’
equity for the years then ended, and a summary of significant accounting
policies and other explanatory information.

14 **Management's Responsibility for the Consolidated Financial**
15 **Statements**

16 Management is responsible for the preparation and fair presentation of
17 these consolidated financial statements in accordance with International
18 Financial Reporting Standards as issued by the International Accounting
19 Standards Board, and for such internal control as management
20 determines is necessary to enable the preparation of consolidated
21 financial statements that are free from material misstatement, whether
22 due to fraud or error.

23 **Auditor's Responsibility**

24 Our responsibility is to express an opinion on these consolidated
25 financial statements based on our audits. *We conducted our audits in*
26 *accordance with Canadian generally accepted auditing standards and*
27 *the standards of the Public Company Accounting Oversight Board*
28 *(United States). Those standards require that we comply with ethical*
requirements and plan and perform the audit to obtain reasonable
assurance about whether the consolidated financial statements are free
from material misstatement.

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An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained in our audits is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of Silver Wheaton Corp. and subsidiaries as at December 31, 2014 and December 31, 2013, and their financial performance and their cash flows for the years then ended in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board.

Other Matter

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2014, based on the criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 18, 2015 expressed an unqualified opinion on the Company's internal control over financial reporting.

/s/ Deloitte LLP

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Chartered Accountants
Vancouver, Canada
March 18, 2015

(emphasis added)

460. [REDACTED]

The Truth Emerges

461. On July 6, 2015, after market close, the Company issued a press release announcing that the CRA proposed to reassess Silver Wheaton under various rules under the Income Tax Act (Canada), and that the CRA takes the position that Silver Wheaton owes \$567 million of taxes from the taxation years of 2005 to 2010 from income generated by Silver Wheaton’s foreign subsidiaries. The press release stated in relevant part:

VANCOUVER, July 6, 2015 /PRNewSilver Wheatonire/ - Silver Wheaton Corp. (“Silver Wheaton” or the “Company”) (SILVER WHEATON) (SILVER WHEATON) 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).

1 ***The Proposal outlines CRA's position that the transfer pricing***
2 ***provisions of the Income Tax Act (Canada) relating to income***
3 ***earned by our foreign subsidiaries outside of Canada should apply***
4 ***such that the income of Silver Wheaton subject to tax in Canada***
5 ***should be increased for the 2005 to 2010 taxation years (the***
6 ***"Relevant Taxation Years") by approximately Cdn\$715 million***
7 ***(US\$567 million).*** The issuance of the Proposal does not require the
8 Company to pay any amount to the CRA at this time.

7 Management believes that the Company has filed its tax returns and
8 paid applicable taxes in compliance with Canadian tax law. Silver
9 Wheaton intends to vigorously defend its tax filing positions and is
10 now in the process of preparing its response to the Proposal.

11 “We remain confident in our business structure which we believe is
12 consistent with that typically used by Canadian companies, including
13 Canadian streaming companies, that have international operations,”
14 said Randy Smallwood, President and Chief Executive Officer of
15 Silver Wheaton.

16 “Generally a company is taxable in Canada on its income earned in
17 Canada, while non-Canadian income earned by foreign subsidiaries is
18 not subject to Canadian income tax. However, with this Proposal, the
19 CRA is seeking to tax, within Canada, streaming income earned
20 outside of Canada by our foreign subsidiaries related to mines located
21 outside of Canada,” added Smallwood.

22 Failing a resolution at the Proposal stage, the CRA may proceed to
23 issue notices of reassessment for one or more of the Relevant
24 Taxation Years. If the CRA reassesses Silver Wheaton on the basis
25 outlined in the Proposal, and assuming that Silver Wheaton would be
26 assessed taxes on the foreign subsidiaries' income on the same basis as
27 its Canadian income, Silver Wheaton currently estimates on a
28 preliminary basis that it would be subject to federal and provincial tax
29 of approximately US\$150 million in respect of the Relevant Taxation
30 Years. The Proposal also indicates that the CRA is seeking to apply
31 transfer pricing penalties of approximately Cdn\$72 million (US\$57
32 million) in respect of the Relevant Taxation Years. The Proposal does
33 not indicate the amount of interest or other penalties in respect of the

1 Relevant Taxation Years. Further, taxation years subsequent to 2010
2 remain open to audit by the CRA.

3 Should Silver Wheaton receive a notice of reassessment from the
4 CRA based upon the Proposal, we intend to file a notice of objection
5 within the required 90 day period provided under the *Income Tax Act*
6 (*Canada*). In such a circumstance, Silver Wheaton would be required
7 to pay 50% of the reassessed amount of tax, interest and penalties.
8 This amount, plus interest, would be refunded if the Company were
9 ultimately successful in challenging a reassessment. Any notice of
10 objection would be reviewed by the CRA's Appeals Division. Silver
11 Wheaton also has the right to appeal directly to the Tax Court of
12 Canada 91 days after the date of filing of any notice of objection.

13 The timing for the Proposal process, the CRA appeals process and/or
14 court process (if necessary following the issuance by CRA of any
15 notices of reassessment), is uncertain. Regardless of the timing, Silver
16 Wheaton intends to vigorously defend its tax filing positions.

17 (Emphasis added).

18 462. The next morning, on this news, the Company's share price opened
19 \$0.90 lower and continued falling. On July 7, 2015, as a result of the disclosure that
20 Silver Wheaton had been concealing a Canadian tax liability in excess of \$207
21 million, Silver Wheaton's share price fell \$2.08 per share, or approximately 12%, to
22 close at \$15.46 per share.

23 463. In a July 8, 2015 analyst report titled "Coping With 'Guilty Until Proven
24 Innocent,'" Dundee Capital Markets reduced its target price from CDN \$33/share to
25 CDN \$28/share, estimating that the CRA tax audit could reduce Silver Wheaton's
26 Net Asset Value by 40%.

27 464. In an August 12, 2015 analyst report titled "Q2/15 Results; All Eyes Still
28 On CRA Audit," CIBC reduced its estimate of the Net Asset Value of, and price
target for, Silver Wheaton by 30% in response to the CRA audit.

465. An August 13, 2015 a JP Morgan analyst report noted that the "CRA
Tax Audit Likely to Overhang the Stock."

1 466. As a result of Defendants' wrongful acts and omissions, and the
2 precipitous decline in the market value of the Company's securities, Plaintiffs and
3 other Class members have suffered significant losses and damages.

4 **ADDITIONAL EVIDENCE OF DELIBERATE MISCONDUCT**

5 ***(a) Suspicious Behavior when Canadian Government Officials visited***
6 ***Silver Wheaton Caymans's Offices in May 2011 to Review its Tax Filings and***
7 ***Conduct an Investigation***

8 467. Officials from the Canadian government visited Silver Wheaton's
9 Cayman Islands office in May 2012 for a review of its operations and financial
10 records, to determine if the operation was a separate entity from the corporate
11 operation in Vancouver. The Canadian officials were also there to determine if the
12 company filed the correct amount of taxes.

13 468. Prior to the CRA officials' visit, Silver Wheaton sent down a team of
14 internal accountants and auditors to the Silver Wheaton Caymans office to prep the
15 Silver Wheaton Caymans employees on what to say to the CRA officials.

16 469. FE1 said the government officials were there to determine if the Silver
17 Wheaton Caymans office was a separate entity from the Vancouver corporate
18 headquarters and also to review the taxes the company filed, stating "They wanted to
19 confirm that these two companies, Silver Wheaton in Caymans and Silver Wheaton
20 (corporate) was not one operation, that they were two separate entities," she said.
21 "And that the income they were making was applied correctly on their taxes. That the
22 amount they declared on their taxes was correct."

23 470. FE1 suspected that Silver Wheaton Canada might have been dodging
24 Canadian taxes because of her bosses' behavior prior to the visit from Canadian
25 government officials, and that the company might have been hiding something from
26 Canadian tax officials when they visited Silver Wheaton Caymans in May 2011.

27 471. FE1 recalled that four Canadian government officials set up in the office
28 boardroom and each employee went in for a private interview. After each interview,

1 the Canadian officials met with Charpentier and Tatarkin to discuss the employee’s
2 answers.

3 472. The officials asked FE1 a series of questions. They told her, “We’re
4 here because we feel Silver Wheaton had not been paying their taxes, and we want to
5 see if you know or you saw anything to help us to confirm this.”

6 473. When the officials asked her directly if she had seen anything that raised
7 red flags in her mind, she said no. But she noted that Tatarkin and Charpentier later
8 expressed displeasure with her that her facial expression had not assured the officials
9 that she was being fully truthful. FE1 felt uncomfortable being instructed how she
10 should substantively answer each question, stating that “From my experience with
11 other companies, that was not the first time being questioned (by officials), but **it was**
12 **the first time a company had me practice what to say and they told you what**
13 **they wanted you to say**” (emphasis added).

14 474. Carpenter and Tatarkin falsely told Silver Wheaton Caymans employees
15 that the company passed the review (tax audit). FE1 never heard about any problems
16 discovered by Canadian officials.

17 475. [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 476. [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 (b) Additional Facts Showing Defendants' Subjective Awareness of Tax
2 Law Violations

3 477. [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 478. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 479. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 480. [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

PLAINTIFFS' CLASS ACTION ALLEGATIONS

1
2 481. Plaintiffs bring this action as a class action pursuant to Federal Rule of
3 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who
4 purchased or otherwise acquired Silver Wheaton securities during the Class Period
5 (the "Class"); and were damaged upon the revelation of the alleged corrective
6 disclosure. Excluded from the Class are Defendants herein, the officers and directors
7 of Silver Wheaton Canada, Silver Wheaton Caymans, or Deloitte, at all relevant
8 times, members of their immediate families and their legal representatives, heirs,
9 successors or assigns and any entity in which Defendants have or had a controlling
10 interest.

11 482. The members of the Class are so numerous that joinder of all members is
12 impracticable. Throughout the Class Period, Silver Wheaton securities were actively
13 traded on the New York Stock Exchange ("NYSE"). While the exact number of Class
14 members is unknown to Plaintiffs at this time and can be ascertained only through
15 appropriate discovery, Plaintiffs believe that there are hundreds or thousands of
16 members in the proposed Class. Record owners and other members of the Class may
17 be identified from records maintained by Silver Wheaton Canada or its transfer agent
18 and may be notified of the pendency of this action by mail, using the form of notice
19 similar to that customarily used in securities class actions.

20 483. Plaintiffs' claims are typical of the claims of the members of the Class as
21 all members of the Class are similarly affected by Defendants' wrongful conduct in
22 violation of federal law that is complained of herein.

23 484. Plaintiffs will fairly and adequately protect the interests of the members
24 of the Class and have retained counsel competent and experienced in class and
25 securities litigation. Plaintiffs have no interests antagonistic to or in conflict with
26 those of the Class.

1 485. Common questions of law and fact exist as to all members of the Class
2 and predominate over any questions solely affecting individual members of the Class.

3 Among the questions of law and fact common to the Class are:

4 • whether the federal securities laws were violated by Defendants' acts as
5 alleged herein;

6 • whether statements made by Defendants to the investing public during
7 the Class Period misrepresented material facts about the business, operations and
8 management of Silver Wheaton;

9 • whether the Individual Defendants caused Silver Wheaton to issue false
10 and misleading financial statements during the Class Period;

11 • whether Defendants acted knowingly or recklessly in issuing false and
12 misleading financial statements;

13 • whether the prices of Silver Wheaton securities during the Class Period
14 were artificially inflated because of the Defendants' conduct complained of herein;
15 and

16 • whether the members of the Class have sustained damages and, if so,
17 what is the proper measure of damages.

18 486. A class action is superior to all other available methods for the fair and
19 efficient adjudication of this controversy since joinder of all members is
20 impracticable. Furthermore, as the damages suffered by individual Class members
21 may be relatively small, the expense and burden of individual litigation make it
22 impossible for members of the Class to redress individually the wrongs done to them.
23 There will be no difficulty in the management of this action as a class action.

24 487. Plaintiffs may rely, in part, upon the presumption of reliance established
25 by the fraud-on-the-market doctrine in that:

26 • Defendants made public misrepresentations or failed to disclose material
27 facts during the Class Period;

28 • the omissions and misrepresentations were material;

- 1 • Silver Wheaton securities are traded in an efficient market;
- 2 • Over 8 billion of Silver Wheaton's shares were traded with moderate to
- 3 heavy volume on the NYSE during the Class Period;
- 4 • Silver Wheaton was covered by multiple analysts;
- 5 • the misrepresentations and omissions alleged would tend to induce a
- 6 reasonable investor to misjudge the value of Silver Wheaton's securities; and
- 7 • Plaintiffs and members of the Class purchased, acquired and/or sold
- 8 Silver Wheaton securities between the time the Defendants failed to disclose or
- 9 misrepresented material facts and the time the true facts were disclosed, without
- 10 knowledge of the omitted or misrepresented facts.

11 488. Based upon the foregoing, Plaintiffs and the members of the Class are
12 entitled to a presumption of reliance upon the integrity of the market.

13 **COUNT I**

14 **Violations of Section 10(b) of The Exchange Act and Rule 10b-5**
15 **Against The Silver Wheaton Defendants**

16 489. Plaintiffs repeat and reallege each and every allegation contained above
17 as if fully set forth herein.

18 490. This Count is asserted against the Silver Wheaton Defendants and is
19 based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
20 promulgated thereunder by the SEC.

21 491. During the Class Period, the Silver Wheaton Defendants engaged in a
22 plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or
23 recklessly engaged in acts, transactions, practices and courses of business which
24 operated as a fraud and deceit upon Plaintiffs and the other members of the Class;
25 made various untrue statements of material facts and omitted to state material facts
26 necessary in order to make the statements made, in light of the circumstances under
27 which they were made, not misleading; and employed devices, schemes and artifices
28 to defraud in connection with the purchase and sale of securities. Such scheme was

1 intended to, and, throughout the Class Period, did: (i) deceive the investing public,
2 including Plaintiffs and other Class members, as alleged herein; (ii) artificially inflate
3 and maintain the market price of Silver Wheaton securities; and (iii) caused Plaintiffs
4 and other members of the Class to purchase or otherwise acquire Silver Wheaton
5 securities at artificially inflated prices. In furtherance of this unlawful scheme, plan
6 and course of conduct, the Silver Wheaton Defendants, and each of them, took the
7 actions set forth herein.

8 492. Pursuant to the above plan, scheme, conspiracy and course of conduct,
9 each of the Defendants participated directly or indirectly in the preparation and/or
10 issuance of the annual reports, SEC filings, press releases and other statements and
11 documents described above, including statements made to securities analysts and the
12 media that were designed to influence the market for Silver Wheaton securities. Such
13 reports, filings, releases and statements were materially false and misleading in that
14 they failed to disclose material adverse information and misrepresented the truth
15 about Silver Wheaton's business and financial statements.

16 493. By virtue of their positions at Silver Wheaton, the Silver Wheaton
17 Defendants had actual knowledge of the materially false and misleading statements
18 and material omissions alleged herein and intended thereby to deceive Plaintiffs and
19 the other members of the Class, or, in the alternative, the Silver Wheaton Defendants
20 acted with reckless disregard for the truth in that they failed or refused to ascertain
21 and disclose such facts as would reveal the materially false and misleading nature of
22 the statements made, although such facts were readily available to the Silver Wheaton
23 Defendants. Said acts and omissions of the Silver Wheaton Defendants were
24 committed willfully or with reckless disregard for the truth. In addition, each of the
25 Silver Wheaton defendants knew or recklessly disregarded that material facts were
26 being misrepresented or omitted as described above.

27 494. Information showing that the Silver Wheaton Defendants acted
28 knowingly or with reckless disregard for the truth is peculiarly within the Silver

1 Wheaton Defendants' knowledge and control. As the senior officers of Silver
2 Wheaton, the Individual Defendants had knowledge of the details of Silver
3 Wheaton's internal affairs, including its untenable transfer pricing tax position.

4 495. The Individual Defendants are liable both directly and indirectly for the
5 wrongs complained of herein. Because of their positions of control and authority, the
6 Individual Defendants were able to and did, directly or indirectly, control the content
7 of the statements of Silver Wheaton. As officers and/or directors of a publicly-held
8 company, the Individual Defendants had a duty to disseminate timely, accurate, and
9 truthful information with respect to Silver Wheaton's businesses, operations, and
10 financial condition.

11 496. During the Class Period, Silver Wheaton securities were traded on an
12 active and efficient market. Plaintiffs and the other members of the Class, relying on
13 the materially false and misleading statements described herein, which the Silver
14 Wheaton Defendants made, issued or caused to be disseminated, or relying upon the
15 integrity of the market, purchased or otherwise acquired shares of Silver Wheaton
16 securities at prices artificially inflated by the Silver Wheaton Defendants' wrongful
17 conduct. Had Plaintiffs and the other members of the Class known the truth, they
18 would not have purchased or otherwise acquired said securities, or would not have
19 purchased or otherwise acquired them at the inflated prices that were paid. At the
20 time of the purchases and/or acquisitions by Plaintiffs and the Class, the true value of
21 Silver Wheaton securities was substantially lower than the prices paid by Plaintiffs
22 and the other members of the Class. The market price of Silver Wheaton securities
23 declined sharply upon public disclosure of the facts alleged herein to the injury of
24 Plaintiffs and Class members.

25 497. By reason of the conduct alleged herein, the Silver Wheaton Defendants
26 knowingly or recklessly, directly or indirectly, have violated Section 10(b) of the
27 Exchange Act and Rule 10b-5 promulgated thereunder.

28

1 498. This action was filed within two years of discovery of the fraud and
2 within five years of each Plaintiff's and the Class's purchases of securities giving rise
3 to the cause of action.

4 499. As a direct and proximate result of the Silver Wheaton Defendants'
5 wrongful conduct, Plaintiffs and the other members of the Class suffered damages in
6 connection with their respective purchases, acquisitions and sales of the Company's
7 securities during the Class Period, upon the disclosure that the Company had been
8 disseminating misrepresented financial statements to the investing public.

9 **COUNT II**

10 **Violations of Section 20(a) of The Exchange Act**
11 **Against The Individual Defendants**

12 500. Plaintiffs repeat and reallege each and every allegation contained in the
13 foregoing paragraphs as if fully set forth herein.

14 501. During the Class Period, the Individual Defendants participated in the
15 operation and management of Silver Wheaton, and conducted and participated,
16 directly and indirectly, in the conduct of Silver Wheaton's business affairs. Because
17 of their senior positions, they knew the adverse non-public information about Silver
18 Wheaton's current financial position and future business prospects.

19 502. As officers and/or directors of a publicly owned company, the Individual
20 Defendants had a duty to disseminate accurate and truthful information with respect
21 to Silver Wheaton's business practices, and to correct promptly any public statements
22 issued by Silver Wheaton which had become materially false or misleading.

23 503. Because of their positions of control and authority as senior officers, the
24 Individual Defendants were able to, and did, control the contents of the various
25 reports, press releases and public filings which Silver Wheaton disseminated in the
26 marketplace during the Class Period concerning the Company's business, operational
27 and accounting policies. Throughout the Class Period, the Individual Defendants
28 exercised their power and authority to cause Silver Wheaton to engage in the

1 wrongful acts complained of herein. The Individual Defendants therefore, were
2 “controlling persons” of Silver Wheaton within the meaning of Section 20(a) of the
3 Exchange Act. In this capacity, they participated in the unlawful conduct alleged
4 which artificially inflated the market price of Silver Wheaton securities.

5 504. Each of the Individual Defendants, therefore, acted as a controlling
6 person of Silver Wheaton. By reason of their senior management positions and/or
7 being directors of Silver Wheaton, each of the Individual Defendants had the power
8 to direct the actions of, and exercised the same to cause, Silver Wheaton to engage in
9 the unlawful acts and conduct complained of herein. Each of the Individual
10 Defendants exercised control over the general operations of Silver Wheaton and
11 possessed the power to control the specific activities which comprise the primary
12 violations about which Plaintiffs and the other members of the Class complain.

13 505. This action was filed within two years of discovery of the fraud and
14 within five years of each Plaintiff’s and the Class’s purchases of securities giving rise
15 to the cause of action.

16 506. By reason of the above conduct, the Individual Defendants are liable
17 pursuant to Section 20(a) of the Exchange Act for the violations committed by Silver
18 Wheaton.

19 **COUNT III**

20 **Violations of Section 10(b) of The Exchange Act**
21 **Against Deloitte**

22 507. Plaintiffs repeat and reallege each and every allegation contained above
23 as if fully set forth herein.

24 508. This cause of action is asserted against Defendants.

25 509. During the Class Period, Deloitte carried out a plan, scheme and course
26 of conduct which was intended to, and throughout the Class Period, did: (1) deceive
27 the investing public, including Plaintiffs and other Class members, as alleged herein;
28 and (2) cause Plaintiffs and other members of the Class to purchase Silver Wheaton

1 securities at artificially inflated and distorted prices. In furtherance of this unlawful
2 scheme, plan and course of conduct, Deloitte issued knowingly false audit reports
3 during the Class Period. Deloitte's accounting practices were so deficient that the
4 audit amounted to no audit at all, or an egregious refusal to see the obvious, or to
5 investigate the doubtful, or that the accounting judgments which were made were
6 such that no reasonable accountant would have made the same decisions if confronted
7 with the same facts.

8 510. Deloitte, directly and indirectly, by the use, means or instrumentalities of
9 interstate commerce and/or of the mails, engaged and participated in a continuous
10 course of conduct to misrepresent the true financial condition or Silver Wheaton and
11 conceal adverse material information about the business, operations and future
12 prospects of Silver Wheaton as specified herein.

13 511. Deloitte employed devices, schemes and artifices to defraud, while in
14 possession of material adverse non-public information and engaged in acts, practices,
15 and a course of conduct as alleged herein in an effort to assure investors of Silver
16 Wheaton's value, performance and continued substantial growth, as well as the
17 absence of contingent tax liabilities, which included the making of, or the
18 participation in the making of, untrue statements of material facts and omitting to
19 state material facts necessary in order to make the statements made about Silver
20 Wheaton and its business operations and financial condition in light of the
21 circumstances under which they were made, not misleading, as set forth more
22 particularly herein, and engaged in transactions, practices and a course of business
23 that operated as a fraud and deceit upon the purchasers of Silver Wheaton securities
24 during the Class Period.

25 512. Deloitte had actual knowledge of the misrepresentations and omissions
26 of material facts set forth herein, or acted with reckless disregard for the truth in that
27 failed to ascertain and to disclose such facts, even though such facts were available to
28 them. Deloitte's material misrepresentations and/or omissions were done knowingly

1 or recklessly and for the purpose and effect of concealing Silver Wheaton's financial
2 condition from the investing public and supporting the artificially inflated price of its
3 securities. As demonstrated by Deloitte's false and misleading statements during the
4 Class Period, Deloitte, if it did not have actual knowledge of the misrepresentations
5 and omissions alleged, was highly reckless in failing to obtain such knowledge by
6 failing to take steps necessary to discover whether those statements were false or
7 misleading.

8 513. As a result of the dissemination of the materially false and misleading
9 information and failure to disclose material facts, as set forth above, the market price
10 for Silver Wheaton's securities was artificially inflated during the Class Period.

11 514. In ignorance of the fact that market prices of Silver Wheaton's publicly-
12 traded securities were artificially inflated or distorted, and relying directly or
13 indirectly on the false and misleading statements made by defendants, or upon the
14 integrity of the market in which Silver Wheaton's securities trade, and/or on the
15 absence of material adverse information that was known to or recklessly disregarded
16 by Defendants but not disclosed in public statements by defendants during the Class
17 Period, Plaintiffs and the other members of the Class acquired Silver Wheaton
18 securities during the Class Period at artificially high prices and were damaged
19 thereby.

20 515. At the time of said misrepresentations and omissions, Plaintiffs and other
21 members of the Class were ignorant of their falsity, and believed them to be true. Had
22 Plaintiffs and the other members of the Class and the marketplace known the truth
23 regarding Silver Wheaton's financial results and condition, Plaintiffs and other
24 members of the Class would not have purchased or otherwise acquired Silver
25 Wheaton securities, or, if they had acquired such securities during the Class Period,
26 they would not have done so at the artificially inflated prices or distorted prices at
27 which they did.

28

1 516. By virtue of the foregoing, Deloitte has violated Section 10(b) of the
2 Exchange Act, and Rule 10b-5 promulgated thereunder.

3 517. As a direct and proximate result of the Defendants' wrongful conduct,
4 Plaintiffs and the other members of the Class suffered damages in connection with
5 their respective purchases and sales of Silver Wheaton's securities during the Class
6 Period.

7 518. This action was filed within two years of discovery of the fraud and
8 within five years of Plaintiffs' purchases of securities giving rise to the cause of
9 action.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

12 A. Determining that the instant action may be maintained as a class action
13 under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiffs as
14 Class representatives;

15 B. Requiring Defendants to pay damages sustained by Plaintiffs and the
16 Class by reason of the acts and transactions alleged herein;

17 C. Awarding Plaintiffs and the other members of the Class prejudgment and
18 post-judgment interest, as well as her reasonable attorneys' fees, expert fees and other
19 costs; and

20 D. Awarding such other and further relief as this Court may deem just and
21 proper.

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DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury.

Dated: April 12, 2018

Respectfully submitted,

THE ROSEN LAW FIRM, P.A.

/s/ Laurence M. Rosen
Laurence M. Rosen, Esq. (SBN 219683)
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Email: lrosen@rosenlegal.com

Counsel for Plaintiffs/Class Representatives

CERTIFICATE OF SERVICE

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I, Laurence Rosen, hereby declare under penalty of perjury as follows:

I am attorney with the Rosen Law Firm, P.A., with offices at 355 South Grand Avenue, Suite 2450, Los Angeles, CA, 90071. I am over the age of eighteen.

On April 12, 2018, I electronically filed the foregoing CONSOLIDATED SECOND AMENDED CLASS ACTION COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to counsel of record.

Executed on April 12, 2018

/s/ Laurence Rosen
Laurence Rosen