

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

JOHN MATTHEW DONOHUE

Plaintiff

- and -

BAJA MINING CORP., JOHN GREENSLADE, ROWLAND L. WALLENIUS,
MICHAEL SHAW, ADAM WRIGHT, AND PRICEWATERHOUSECOOPERS LLP

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992, S.O. 1992, c. 6*

PLAN OF DISTRIBUTION

DEFINED TERMS

1. For the purposes of this Plan of Distribution, the definitions set out in the Settlement Agreement apply to and are incorporated into this Plan of Distribution and, in addition, the following definitions apply:
 - (a) **“Acquisition Expense”** means the total monies paid by the Claimant (including brokerage commissions) to purchase or otherwise acquire Eligible Securities;
 - (b) **“Administrator”** means RicePoint Administration Inc. (formerly “NPT RicePoint”);
 - (c) **“Alleged Corrective Disclosure”** means the press release which was released at 8:16 a.m. on April 23, 2012 in which Baja identified a projected costs increase of approximately \$246 million after exhausting existing contingency and overrun facilities;
 - (d) **“Claimant”** means a Class Member who submits a properly completed claim form and all required supporting documentation to the Administrator, on or before

the Claims Deadline including a Class Member whose timely but deficient claim form is subsequently remedied and accepted by the Administrator;

- (e) **"Claims Deadline"** means ___[TBD]_____, 2016;
- (f) **"Class Member"** means all persons and entities, wherever they may reside or be domiciled, other than Excluded Persons and Opt-Out Parties, who acquired securities of Baja during the Class Period;
- (g) **"Class Period"** means November 1, 2010 to April 23, 2012, inclusive;
- (h) **"Disposition Proceeds"** means the total proceeds paid to the Claimant (without deducting any commissions paid in respect of the dispositions) in consideration of the sale of all of their Eligible Securities; provided, however, that with respect to any Eligible Securities that the Claimant continues to hold, they shall be deemed to have been disposed of for an amount equal to the number of Eligible Securities still held, multiplied by the difference between the average price per common share paid for those Eligible Securities (including any commissions paid in respect thereof determined on a per common share basis) and \$0.41;
- (i) **"Eligible Securities"** means Securities acquired by a Class Member during the Class Period who has not validly opted-out;
- (j) **"Excluded Person"** means all former and current defendants and any of their subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors or assigns;
- (k) **"FIFO"** means the principle of first-in first-out, wherein common shares are deemed to be sold in the same order that they were purchased or otherwise acquired (i.e. the first common shares purchased or otherwise acquired are deemed to be the first sold); and which requires, in the case of a Claimant who held common shares of Baja at the commencement of the Class Period, that those common shares be deemed to have been sold completely before Eligible Securities are sold, or deemed sold;
- (l) **"Net Loss"** means that the Claimant acquired Eligible Securities before the Alleged Corrective Disclosure and either held or disposed of the Eligible

Securities after the Alleged Corrective Disclosure and the Claimant's Disposition Proceeds are less than the Claimant's Acquisition Expense;

- (m) **"Net Settlement Fund"** means the Settlement Amount plus accrued interest, less Administration Expenses, Class Counsel Fees, and any other costs or expenses related to the Action or the Settlement;
- (n) **"Securities"** means Baja's common shares; and
- (o) **"Settlement Input Value"** means a Claimant's nominal damages, being the greater of (a) the total amount calculated pursuant to the formulas set forth herein, and (b) \$20.00, which amount forms the basis of each Claimant's *pro rata* share of the Net Settlement Fund. The formulas applied in the calculation of the Settlement Input Value are based on the calculation of losses as provided for under the Ontario *Securities Act*, including the establishment of the 10 day volume weighted average trading price of Baja common shares following the alleged corrective disclosure.

CALCULATION OF SETTLEMENT INPUT VALUE

2. A Claimant must have sustained a Net Loss in order to be eligible to receive a payment from the Net Settlement Fund.
3. The Administrator shall first determine whether a Claimant sustained a Net Loss. If the Claimant has sustained a Net Loss, the Administrator will go on to calculate their Settlement Input Value.
4. In order to qualify for a payment under this Plan of Distribution, a Claimant must have acquired Eligible Securities before the Alleged Corrective Disclosure and either held or disposed of the Eligible Securities after the Alleged Corrective Disclosure. Any person or entity who disposed of all Eligible Securities before the Alleged Corrective Disclosure shall be deemed not to have sustained a Net Loss and will not qualify for payment under this Plan of Distribution.

CALCULATION OF COMPENSATION

5. The Administrator will apply FIFO to distinguish the sale of Baja common shares held at the beginning of the Class Period from the sale of Eligible Securities, and will continue to apply FIFO to determine the purchase or acquisition transactions which correspond to the sale of Eligible Securities. The Administrator will use this data in the calculation of a Claimant's Settlement Input Value according to the formulas listed below.
6. The date of sale or deemed disposition shall be the trade date (the date on which the transaction was made), as opposed to the settlement date (the date on which the proceeds were received), of the transaction.
7. For the purposes of any calculation under the Plan of Distribution, the Administrator will account for any stock splits or consolidations that occur during or after the Class Period, such that Claimants' holdings for the purposes of the calculations are completed in units equivalent to those traded during the Class Period.
8. A Claimant's Settlement Input Value will be the total of the amounts calculated pursuant to the following categories. A Claimant may have entitlements under multiple categories:
 - A. **No Settlement Input Value shall be available for any Eligible Securities *acquired and disposed of* prior to the Alleged Corrective Disclosure, that is, prior to April 23, 2012.**
 - B. **For Eligible Securities acquired prior to the Alleged Corrective Disclosure and *disposed of* during the 10 trading day period following the Alleged Corrective Disclosure, that is, on or between April 23 and the close of trading on May 4, 2012, the Settlement Input Value shall be:**
 - i. an amount equal to the number of Eligible Securities thus disposed of, multiplied by the difference between the volume weighted average price* paid for those Eligible Securities (including any commissions paid in respect thereof) and the per share price received upon the disposition of those Eligible Securities (without deducting any commissions paid in respect of the

* The Administrator will calculate the volume weighted average price paid based on the information provided in the claim form.

disposition); put simply, the difference between the volume weighted average purchase price paid by the Claimant and the disposition price received by the Claimant times the number of shares sold between April 23 and May 4, 2012.

C. For Eligible Securities acquired prior to the Alleged Corrective Disclosure and *disposed of after* the 10 trading day period following the Alleged Corrective Disclosure, that is, after the close of trading on May 4, 2012, the Settlement Input Value shall be the lesser of:

- i. an amount equal to the number of Eligible Securities thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Securities (including any commissions paid in respect thereof) and the per share price received upon the disposition of those Eligible Securities (without deducting any commissions paid in respect of the disposition); put simply, the difference between the volume weighted average purchase price paid by the Claimant and the disposition price received by the Claimant times the number of shares sold after the close of trading on May 4, 2012; and
- ii. an amount equal to the number of Eligible Securities thus disposed of, multiplied by the difference between the volume weighted average price paid for those Eligible Securities (including any commissions paid in respect thereof) and \$0.41 [being the 10 trading day volume weighted average trading price of Baja common shares from April 23 to May 4, 2012]; put simply, the difference between the volume weighted average purchase price paid by the Claimant and \$0.41 times the number of shares sold after the close of trading on May 4, 2012.

D. For Eligible Securities acquired prior to the Alleged Corrective Disclosure and still held at the time the Claim Form is completed, the Settlement Input Value shall be:

- i. an amount equal to the number of Eligible Securities still held, multiplied by the difference between the volume weighted average price paid for those Eligible Securities (including any commissions paid in respect thereof) and \$0.41 [being the 10 trading day volume weighted average trading price of

Baja common shares from April 23 to May 4, 2012]; put simply, the difference between the volume weighted average purchase price paid by the Claimant and \$0.41 times the number of shares still held.

- E. For Claimants with Settlement Input Values calculated under Categories B-D, or any of them, the total minimum amount payable to each Claimant in the aggregate under all categories shall be \$20.00.**

FINAL DISTRIBUTION

9. Each Claimant who makes an accepted claim will be compensated by a minimum payment of \$20.00, subject only to potential pro-ration if that is necessary due to high claims rates.
10. Each Claimant's actual compensation shall be the portion of the Net Settlement Fund equivalent to the ratio of his, her or its Settlement Input Value to the total Settlement Input Values of all Claimants multiplied by the Net Settlement Fund, as calculated by the Administrator.
11. Compensation shall be paid to Claimants in Canadian currency.
12. The Administrator shall be authorized to distribute the Net Settlement Fund in accordance with this Plan of Distribution upon having received and reviewed the Claim Forms submitted by the Claims Deadline without further order of the Court.
13. If, one hundred and eighty (180) days from the date on which the Administrator distributes the Net Settlement Fund, the Account remains in a positive balance (whether due to tax refunds, interest, uncashed cheques or otherwise), the Administrator shall, if feasible, reallocate such balance among the Claimants in an equitable and economic fashion. In the event that such a distribution is not feasible and undistributed funds remain, Class Counsel shall design an alternative method of distributing any remaining funds to holders of Eligible Securities and shall seek approval from the Court in respect of any such method.
14. The Administrator, in concert with Class Counsel, shall have the discretion to interpret this Plan of Distribution in such a fashion as to ensure the facilitation of the goals of the Settlement Agreement for the benefit of Class Members.

15. Under no circumstances will any repayment be made to the Defendants.