Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

EMERITA RESOURCES CORP.

Plaintiff

and

DAVID PATRICK GOWER, MICHAEL LAWRENCE GUY, SERGIO DAMIAN LOPEZ, GREGORY FRANCIS DURAS, HELIO BOTELHO DINIZ, LITHIUM IONIC CORP., FALCON METAIS LTDA., and MGLIT EMPREENDIMENTOS LTDA.

Defendants

STATEMENT OF CLAIM

[DRAFT FOR REVIEW BY EMERITA SPECIAL COMMITTEE]

TO THE DEFENDANTS

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

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

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

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 8th Floor
Toronto ON M5G 1R7

TO: DAVID PATRICK GOWER

AND TO: MICHAEL LAWRENCE GUY

AND TO: SERGIO DAMIAN LOPEZ

AND TO: GREGORY FRANCIS DURAS

AND TO: HELIO BOTELHO DINIZ

AND TO: LITHIUM IONIC CORP.

AND TO: FALCON METAIS LTDA.

AND TO: MGLIT EMPREENDIMENTOS LTDA.

CLAIM

1. Emerita Resources Corp. ("**Emerita**"), claims:

(a) as against David Patrick Gower ("**Gower**"), Michael Lawrence Guy ("**Guy**"), Sergio Damian Lopez ("**Lopez**"), and Gregory Francis Duras ("**Duras**", and, together with Gower, Guy, and Lopez, the "**Director & Officer Defendants**"):

(i) a declaration that the Director & Officer Defendants have breached their fiduciary duties to Emerita under section 134 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "***Act***"), and at common law, and an order for:

(1) equitable compensation in the total amount of all costs incurred by Emerita to mitigate or remediate the Director & Officer Defendants' breaches of fiduciary duties; and

(2) additionally, or in the alternative, damages;

(ii) a declaration that the Director & Officer Defendants are liable for breach of confidence and an order enjoining any further breach of confidence; and

(iii) damages in an amount to be quantified prior to trial for the Director & Officer Defendants' breach of fiduciary duty, breach of confidence, deceit, and fraudulent misrepresentation;

(b) as against Lithium Ionic Corp. ("**Lithium Ionic**") and MGLIT Empreendimentos Ltda. ("**MGLIT**"):

(i) a declaration that the Falcon Project (as defined herein) is held in trust for Emerita;

(ii) an interim and interlocutory order enjoining Lithium Ionic and/or MGLIT from selling, encumbering, or dealing with the Falcon Project (as defined herein);

(iii) an interim and interlocutory order enjoining Lithium Ionic and/or MGLIT from engaging in any transaction (or related transaction) exceeding $25,000 without notice to Emerita and approval of the Court; and

(iv) an Order transferring Lithium Ionic/MGLIT's interest in the Falcon Project to Emerita;

(c) as against Falcon Metais Ltda. ("**Falcon Metais**"):

(i) a declaration that Falcon Metais has breached the Option Agreement (as defined herein); and

(ii) damages in an amount to be quantified prior to trial for Falcon Metais' breach of the Option Agreement (as defined herein);

(d) as against Hélio Botelho Diniz ("**Diniz**"):

(i) a declaration that Diniz is liable for the torts of deceit and inducing breach of contract; and

(ii) damages in an amount to be quantified prior to trial for Diniz's deceit and inducement of breach of contract;

(e) as against the Director & Officer Defendants and Diniz:

(i) a declaration that these defendants hold all shares in Lithium Ionic in trust for Emerita or, in the alternative, that all such shares and any other form of compensation or profit received in connection with their conduct as described herein be disgorged;

(f) as against all Defendants:

(i) an accounting and disgorgement of all gains, income, and profits realized (or capable of being realized) through and in relation to the Falcon Project;

(ii) punitive damages in the amount of $10,000,000;

(iii) the costs of this proceeding on a substantial indemnity basis, plus all applicable taxes;

(iv) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

(v) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(g) an order that Emerita shall reimburse and indemnify PM Super Fund ("**PMSF**") for its legal costs, on a full indemnity basis, as such costs are incurred; and

(h) such further and other relief as this Honourable Court may deem just.

OVERVIEW

2. This is a clear case of misappropriation of corporate assets. In September 2018, Emerita exercised an option to acquire a 100% interest in the Falcon Project, a lithium project in Brazil. Between 2018 and 2021, Emerita discussed the Falcon Project in its public filings, describing it as an "exceptional opportunity" to "add value" to the company. The filings also made vague references to 'interested third parties' with whom Emerita might partner to develop the Falcon Project.

3. Out of nowhere, in May 2021, the Director & Officer Defendants caused Emerita to publicly announce that it had relinquished the project because it had "not been successful in liquidating it". This statement was false. Emerita had neither relinquished the project nor had it made any attempt to liquidate it. Rather, unbeknownst to Emerita's shareholders, four of its directors and officers – the Director & Officer Defendants – had misappropriated the corporate opportunity.

4. In fact, since at least late 2020, these directors and officers had been working with the directing mind of the Falcon Project's Brazilian vendor to divert the Falcon Project to another company in which they were the majority shareholders. They failed to disclose this diversion, or the conflict of interest, to Emerita or its shareholders. They then moved to cover up this wrongful diversion by causing Emerita to issue false and misleading public statements about the purported "relinquishment" of the Falcon Project.

5. This blatant act of misappropriation is nowhere in any public filings. It came to light only in early April 2026, when the Ontario Securities Commission ("**OSC**") released an Application for Enforcement Proceeding regarding the Falcon Project. Shortly thereafter, some (but not all) of the Director & Officer Defendants resigned from their positions with both Emerita and Lithium Ionic. To this day, however, Lithium Ionic holds title to and controls the Falcon Project, enriching its own shareholders (including the Director & Officer Defendants) at the expense of Emerita's shareholders.

THE PARTIES

6. Emerita is a mining company and reporting issuer registered under the laws of Ontario. Emerita is listed on the TSX Venture Exchange (TSX-V:EMO), OTC Markets Group Best Markets (OTCQX:EMOTF), and the Frankfurt Stock Exchange (FSE:LLJA). Emerita's registered head office is located at 36 Lombard Street, Floor 6, in Toronto.

7. Lithium Ionic is a mining company and reporting issuer registered under the laws of Ontario. Lithium Ionic is listed on the TSX Venture Exchange (TSX:LTH.V). Lithium Ionic's registered head office is located at 36 Lombard Street, Floor 6, in Toronto (i.e., at the same address as Emerita's head office).

8. Gower was, at all material times, a director and the Chief Executive Officer of Emerita. Gower was also, at all material times, a director of Lithium Ionic.

9. Guy was, at all material times, a director and the Chairman of Emerita. Guy was also, at all material times, a director of Lithium Ionic.

10. Duras is a Certified Professional Accountant and a Certified General Accountant. Duras is and was, at all material times, the Chief Financial Officer of Emerita. Duras was also, from its establishment until in or about November 2022, the Chief Financial Officer of Lithium Ionic.

11. Lopez is a lawyer licensed by the Law Society of Ontario. Lopez is and was, at all material times, the Corporate Secretary of Emerita. Lopez was also, at all material times, the Corporate Secretary of Lithium Ionic.

12. Diniz is and was, at all material times, a director and the Managing Director, Brazil of Lithium Ionic. Diniz is and was, at all material times, the principal shareholder and directing mind of Falcon Metais and MGLIT (Diniz, Falcon Metais, and MGLIT are, collectively, the "**Brazilian Defendants**"). Each of Falcon Metais and MGLIT are companies registered and operating in Brazil. MGLIT is a wholly owned subsidiary of Lithium Ionic.

13. Gower, Guy, Duras, and Lopez are Ontario residents. Diniz is a resident of Brazil.

14. Gower, Guy, Duras, Lopez, and Diniz are shareholders of Lithium Ionic.

15. PMSF is an Australian resident trust that holds shares of Emerita. By order of the Superior Court of Justice dated **DATE**, leave was granted to PMSF to proceed with a derivative action on behalf of and in the name of Emerita as against the Defendants to this action.

THE OPTION AGREEMENT

16. In or about June 2016, Emerita entered into an agreement with Falcon Metais (the "**Option Agreement**") for an option to acquire 100% of the mining claims, applications, leases, or other forms of mineral rights comprising the Falcon Litio MG Project in Brazil (the "**Falcon Project**").

17. The Falcon Project, which includes the Bandeira Project (as described below), is adjacent to Brazil's two producing lithium mines—CBL and Sigma Lithium—in Brazil's Lithium Valley. The Falcon Project comprised one exploration permit and five applications for exploration permits. The northwestern property boundary of the Falcon Project – Bandeira Property is just 500 metres from these existing CLB and Sigma Lithium properties.

18. The Option Agreement provided, *inter alia*, that:

(a) Falcon Metais was the sole titleholder and beneficial owner of the Falcon Project;

(b) Falcon Metais would hold the Falcon Project in trust for Emerita, or its nominee, until the project was assigned and transferred to Emerita or its nominee; and

(c) Emerita could buy and exercise the option by issuing a total of 1.5 million common shares to Falcon Metais.

19. On or about June 13, 2016, Emerita announced that it had entered into the Option Agreement. In its press release, Joaquin Meriono, President and CEO of Emerita stated:

> This transaction is an exciting development for Emerita. We will continue to pursue advanced projects in the Iberian Peninsula, however, we have been able to leverage our strong contacts in Brazil to acquire an option on a project in a proven environment for lithium immediately adjacent to a producing mine.

20. In the interim MD&A for the period ending June 30, 2016, Emerita stated, that "Falcon will hold the Project in trust for Emerita until Emerita exercises the Option and the Project is assigned and transferred to Emerita."

EMERITA EXERCISES THE OPTION

21. Emerita issued the shares required to buy and exercise the option to Falcon Metais in three equal tranches, as follows:

(a) 500,000 shares on or about June 13, 2016, at a price per share of $0.155 (the "**First Tranche**");

(b) 500,000 shares on or about September 12, 2017, at a price per share of $0.12 (the "**Second Tranche**"); and

(c) 500,000 shares on or about September 12, 2018, at a price per share of $0.04 (the "**Third Tranche**").

22. On or about September 12, 2017, Emerita announced the issuance of the Second Tranche. In this announcement, Gower described the Falcon Project as an "exceptional opportunity to add value at a very low cost".

23. On or about September 12, 2018, Emerita announced the issuance of the Third Tranche and, with it, the exercise of the option pursuant to the Option Agreement. In this announcement, Gower described the Falcon Project as an "exceptional opportunity to add value at a low cost". Gower also stated that "[t]here has been interest expressed by third parties in potentially getting involved in the Litio Project".

24. Contrary to the terms of the Option Agreement, Diniz caused Emerita to issue the shares to HFX Consultoria Empresarial Ltda., a Brazilian company owned and controlled by Diniz.

However, all parties, including Falcon Metais, understood and agreed that Emerita had fulfilled the terms of the Option Agreement and exercised the option.

25. Despite having done so, and unbeknownst to Emerita's shareholders, title to the Falcon Project was never delivered to Emerita contrary to the Option Agreement.

PUBLIC STATEMENTS ABOUT THE FALCON PROJECT

26. After exercising the option, Emerita repeatedly referred to the Falcon Project in its interim and annual filings. In each of the financial statements and management's discussion and analysis (MD&A) filed between September 2018 and February 2021, Emerita described the Option Agreement and the Falcon Project, which it described as an exploration property. In the MD&As, Emerita reiterated that the Falcon Project was an opportunity to "add value at low cost". Specifically:

(a) the MD&A for the year ended September 30, 2018, states: "The Falcon Project provides an opportunity for the Company to add value at a low cost. The Company is currently considering expressions of interest by third parties to be involved with developing the project. Further updates will be provided as they become available". This was repeated in the MD&As for Q1 2019, Q2 2019, and Q3 2019; and

(b) the MD&A for the year ended September 30, 2019, states: "The Falcon Project provides an opportunity for the Company to add value at a low cost. Further updates will be provided as they become available". This was repeated in the MD&As for Q1 2020, Q2 2020, Q3 2020, YE 2020, and Q1 2021.

27. In December 2020, while preparing for an agency agreement for a private placement, Gower confirmed to Lopez, Duras, and others that Emerita continued to have an interest in the Falcon Project. On or about December 10, 2020, Gower sought and received a list of claims comprising the Falcon Project from Diniz, which list was provided to Lopez for inclusion in a schedule to the agency agreement. Emerita filed the agency agreement as a material document on or about January 13, 2021 (the "**Agency Agreement**").

28. Schedule "A" to the Agency Agreement sets out Emerita's existing mining claims. In addition to the Plaza Norte, Sierra Alta, and IBW projects in Spain, Schedule "A" lists seven individual claims, spanning over 1,350 hectares, under the heading "Falcon Litio Project".

THE PURPORTED RELINQUISHMENT

29. On or about May 27, 2021, one or more of the Director & Officer Defendants caused Emerita to publicly state, for the first time, that it had "relinquished" the Falcon Project. The MD&A for Q2 2021, released on that date, stated:

> In June 2016, the Company entered into a binding letter agreement (the "Falcon Agreement") with Falcon Metais Ltda. ("Falcon") pursuant to which Falcon granted to Emerita an option (the "Option") to acquire a 100% interest in the Falcon Litio MG Project (the "Falcon Project").
>
> After having not been successful in liquidating the project in some form, the Company has now relinquished the Falcon project. Going forward, the Company will not have any costs associated with its legacy assets in Brazil other than costs associated with winding down its subsidiaries in Brazil. The Company is now solely focused on its assets in Spain. (the "**May 2021 Relinquishment Statement**")

30. In the MD&A for Q3 2021, filed on or about August 26, 2021, one or more of the Director & Officer Defendants caused Emerita to state:

> As of December 2020, the Company has relinquished its property in Brazil in favour of focusing on projects in Spain. As of the date of this MD&A, the Company

> has wound up its Brazilian operations. (the "**August 2021 Relinquishment Statement**")

31. In its MD&A for the year ended September 30, 2021, which filed on or about January 28, 2022, one or more of the Director & Officer Defendants caused Emerita to state:

> As of December 2020, the Company has relinquished its property in Brazil in favour of focusing on projects in Spain. As of the date of this MD&A, the Company has wound up its Brazilian operations. (the "**January 2022 Relinquishment Statement**" and, collectively, the "**Relinquishment Statements**")

32. From the MD&A for Q1 2022 onwards, there was no mention of the Falcon Project in any of Emerita's filings.

33. The Relinquishment Statements that one or more of the Director & Officer Defendants cause Emerita to make were false and misleading. Emerita had not "relinquished" the Falcon Project. Rather, between December 2020 and May 2022, the Director & Officer Defendants and Diniz misappropriated the Falcon Project for their own benefit and/or the benefit of Lithium Ionic.

MISAPPROPRIATION OF THE FALCON PROJECT

34. In or about December 2020, contrary to the Option Agreement, Diniz took steps to transfer ownership of the Falcon Project from Falcon Metais to MGLIT.

35. On or about December 21, 2020, POCML 6 Inc. (later renamed as Lithium Ionic) was incorporated.

36. In or about May 2021, Gower, Diniz, and Guy discussed pursuing the Falcon Project without Emerita.

37. Gower discussed making the May 2021 Relinquishment Statement with Diniz, and Gower, Guy, Lopez, and Duras participated in the preparation of the May 2021 Relinquishment Statement.

38. In June 2021, Gower told Diniz that he intended to form a private company in Canada that would acquire MGLIT, obtain financing, and be taken public. Gower stated that: "We need a little distance between a transaction and Emerita".

39. Shortly thereafter, the Director & Officer Defendants and Diniz formed and advanced a new company to pursue the Falcon Project. In so doing, they caused Lithium Ionic to misappropriate Emerita's corporate opportunity. Specifically:

(a) on or about July 5, 2021, LI-Ionic Inc. ("**LI-Ionic**") was incorporated, with Gower, Guy, Lopez, and Diniz as directors;

(b) on or about July 6, 2021, Gower, Guy, Lopez, and Diniz, as directors of LI-Ionic, passed a resolution to issue 31,100,000 common shares of LI-Ionic at a price of $0.0000001, as follows:

(i) Gower, together with his spouse and a friend, received 8,000,000 shares;

(ii) Guy received 8,000,000 shares;

(iii) Diniz received 8,000,000 shares;

(iv) Lopez, together with his spouse, received 6,000,000 shares; and

(v) Duras received 500,000 shares;

(c) in or about November and December 2021, Gower, Guy, Lopez, Diniz, and Duras, directly or indirectly through corporations they controlled, entered into agreements with LI-Ionic to provide consulting services in exchange for monthly fees and other compensation;

(d) in late 2021 or early 2022, LI-Ionic acquired 100% of the shares of MGLIT (which, by then, owned the Falcon Project); and

(e) on or about May 19, 2022, Lithium Ionic was formed as a public issuer via an amalgamation involving LI-Ionic, POCML 6 Inc., and 1000088600 Ontario Inc. (the "**Amalgamation**"). Following or as part of this transaction:

(i) LI-Ionic became a wholly owned subsidiary of Lithium Ionic; and

(ii) shares of LI-Ionic were exchanged on a 1:1 basis for Lithium Ionic shares.

40. The Amalgamation was first announced on or about January 12, 2022, and was confirmed on or about February 7, 2022. In each of the news releases announcing and confirming the Amalgamation, Lithium Ionic was described as having a "100% ownership interest in the Itinga lithium project", or the Falcon Project.

41. In a material change report filed on or about February 18, 2022, Lithium Ionic announced that Diniz, Gower, and Guy would be directors, that Diniz would be Chief Executive Officer, that Duras would be Chief Financial Officer, and that Lopez would be corporate secretary.

42. Lithium Ionic continues to hold title to the Falcon Project, which it calls the Bandeira Project and refers to as its "flagship asset". As a result of the wrongful misappropriation described herein, Lithium Ionic and/or MGLIT are holding the Falcon Project in trust for Emerita.

THE OSC'S APPLICATION FOR ENFORCEMENT PROCEEDING

43. On or about April 9, 2026, the OSC released an Application for Enforcement Proceeding under ss. 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. s.5 as against Emerita, the Director & Officer Defendants, Diniz, and Joaquin Merino-Marquez (the "**Application**").

44. Among other things, the Application alleges the fraudulent diversion of the Falcon Project by the Director & Officer Defendants. The Application seeks, *inter alia*, cease trade orders and administrative penalties as against the respondents to the Application.

45. PMSF learned of the Defendants' misconduct, including the misappropriation of the Falcon Project, for the first time upon reading the Application. Up until the release of the Application, the Defendants had taken steps to conceal their breaches and deceit from Emerita and its shareholders.

46. The Defendants' concealment of their wrongful activities extended to misleading the OSC. During the investigation that led to the Application, Gower and Diniz made statements to the OSC that were, in a material respect, misleading or untrue. They did so to cover up the fraud.

47. Specifically, Gower and Diniz asserted that Gower had, in March 2020, signed a document abandoning Emerita's interest in the Falcon Project in exchange for a release from Falcon Metais (the "**Purported Release Letter**"). Gower and Diniz claimed that the Purported Release Letter had been prepared by Diniz, and that Diniz had brought the document to Gower, who signed it by hand in Diniz's presence in Toronto in early March 2020.

48. The Purported Release Letter was not, in fact, signed by Gower in March 2020. Rather, the Purported Release Letter was created at some later time.

EMERITA'S BOARD AND MANAGEMENT CHANGES

49. On or about April 9, 2026, Emerita established a Special Committee of independent directors to "direct the Company's review of, and response to, the Allegations" (the "**Special Committee**").

50. Shortly thereafter, on or about April 15, 2026, a group of shareholders (including PMSF, through Wayne Peters, the sole director for PMSF's trustee) wrote to the Special Committee encouraging that the Special Committee recommend that all individuals named in the Application step down immediately from their director and officer positions while the Application was ongoing.

51. On or about April 20, 2026, Gower, Guy, Lopez, and Diniz resigned from certain of their positions with Emerita and Lithium Ionic:

(a) Gower resigned as Chief Executive Officer and director of Emerita;

(b) Gower resigned as director of Lithium Ionic;

(c) Guy resigned as director and Chairman of Emerita;

(d) Guy resigned as director and Chairman of Lithium Ionic;

(e) Lopez resigned as Corporate Secretary of Lithium Ionic; and

(f) Diniz resigned as director of Lithium Ionic.

52. However, despite having been named as Respondents in the Application: Lopez remains Corporate Secretary of Emerita; Duras remains Chief Financial Officer of Emerita; and Diniz remains Managing Director, Brazil of Lithium Ionic. Gower and Guy continue to remain on as advisors to Emerita. As named Respondents in the Application, it is not appropriate for any of Lopez, Duras, Diniz, Gower, or Guy to remain in these positions.

DIRECTOR & OFFICER DEFENDANTS' MISCONDUCT

53. At all material times, Gower, Guy, Lopez, and Duras owed statutory and common law duties to act honestly and in good faith with a view to the best interests of Emerita. These fiduciary duties included the requirement that the Director & Officer Defendants place the interests of Emerita first and above their own, and that they not allow themselves or their interests to be tainted by self-interest or self-dealing. These fiduciary duties also required the Director & Officer Defendants to avoid conflicts of interest between the interests of Emerita, on the one hand, and any opposing interests, including their own, on the other.

54. The Director & Officer Defendants have engaged in a pattern of misconduct, designed to harm Emerita and in clear breach of their fiduciary duties, including by:

(a) causing Lithium Ionic to misappropriate the Falcon Project (a corporate opportunity belonging to Emerita);

(b) engaging in self-dealing to appropriate a corporate opportunity belonging to Emerita;

(c) preferring their own interests to those of Emerita; and

(d) creating and then failing to disclose the conflict of interest between Emerita and themselves, including as officers, directors and/or shareholders of Lithium Ionic.

55. As directors and/or officers of Emerita, the Director & Officer Defendants received confidential and proprietary information, including about the Falcon Project (the "**Confidential Information**"). That confidential and proprietary information was conveyed to the Director & Officer Defendants with the expectation that it would be held in confidence. The Director & Officer Defendants have acted in breach of that confidence, including by:

(a) appropriating the Confidential Information to further their own interests; and

(b) failing to disclose their use of the Confidential Information.

56. The Director & Officer Defendants acted dishonestly by engaging or participating in the development and filing of the Relinquishment Statements, which statements were misleading or untrue because:

(a) Emerita had not made any attempt to sell or otherwise monetize the Falcon Project as of May 2021;

(b) Emerita had not relinquished the Falcon Project as of December 2020;

(c) the Relinquishment Statements did not mention that Gower, Guy, Lopez, and Duras were going to and had become involved in a new company that intended to pursue the Falcon Project, which they concealed from Emerita and its shareholders; and

(d) the Relinquishment Statements gave the misleading impression that the Falcon Project was relinquished or abandoned because it had no value when, in fact, Gower, Guy, Lopez, and Duras considered it to have value.

57. The Director & Officer Defendants made the Relinquishment Statements knowing them to be false and with the intention that Emerita and its shareholders would act in reliance on them. Emerita acted on these misrepresentations and suffered damages as a result. The Director & Officer Defendants are therefore liable for fraudulent misrepresentation and deceit.

58. The Director & Officer Defendants' actions have caused, and will continue to cause, Emerita to suffer harm. Such harm includes loss of corporate opportunity, reputational damage, loss of market value, out-of-pocket expenses, and other losses that will be particularized before the trial of this action.

BRAZILIAN DEFENDANTS' MISCONDUCT

59. Falcon Metais is liable to Emerita for breach of contract. Falcon Metais and Emerita are parties to the Option Agreement, which required, *inter alia*, that Falcon Metais hold the Falcon Project in trust for Emerita and transfer the Falcon Project to Emerita upon the issuance of 1.5 million common shares.

60. Falcon Metais breached the Option Agreement by:

(a) failing to transfer the Falcon Project to Emerita, despite the conditions for doing so as set out in the Option Agreement having been met; and

(b) transferring the Falcon Project to MGLIT in breach of the Option Agreement and in breach of the terms on which it held the Falcon Project in trust for Emerita.

61. Emerita has suffered damages as a result of Falcon Metais' breach of contract. Particulars of Emerita's damages will be provided prior to trial.

62. Diniz acted dishonestly by engaging or participating in acts or a course of conduct that resulted in the diversion of the Falcon Project from Emerita to Lithium Ionic. Diniz is liable for the tort of deceit. Having caused Falcon Metais to breach the Option Agreement, as described herein, Diniz is further liable for the tort of inducing breach of contract.

SERVICE OUTSIDE OF ONTARIO

63. Diniz is a resident of Brazil. Falcon Metais and MGLIT are Brazilian companies. The Brazilian Defendants are properly served with this originating process, without leave, in accordance with the following provisions of r. 17.02 of Ontario's *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194:

> A party to a proceeding may, without a court order, be served outside Ontario with an originating process or notice of a reference where the proceeding against the party consists of a claim or claims,
> …
> (a) in respect of real or personal property in Ontario;
> …
> (f) in respect of a contract where,
> (i) the contract was made in Ontario,
> (ii) the contract provides that it is to be governed by or interpreted in accordance with the law of Ontario,
> (iii) the parties to the contract have agreed that the courts of Ontario are to have jurisdiction over legal proceedings in respect of the contract, or
> (iv) a breach of the contract has been committed in Ontario, even though the breach was preceded or accompanied by a breach outside Ontario that rendered impossible the performance of the part of the contract that ought to have been performed in Ontario;
> …

(g) in respect of a tort committed in Ontario;
…
(i) for an injunction ordering a party to do, or refrain from doing, anything in Ontario or affecting real or personal property in Ontario;
…
(p) against a person ordinarily resident or carrying on business in Ontario;
…

64. The Brazilian Defendants may be served under r. 17.02(a) because, among other things, the Action seeks disgorgement of gains, profits, and income (i.e., personal property) that were earned in Ontario and in relation to shares of Ontario companies.

65. The Brazilian Defendants may be served under r. 17.02(f) because, among other things, the breach of contract alleged in this Statement of Claim occurred in Ontario.

66. The Brazilian Defendants may be served under r. 17.02(g) because, among other things, the torts of breach of fiduciary duty and breach of confidence occurred in Ontario.

67. The Brazilian Defendants may be served under r. 17.02(i) because, among other things, the Statement of Claim seeks to enjoin any dealing with the Falcon Project, thereby affecting the shares (i.e., personal property) of an Ontario company, which shares are held in Ontario.

68. The Brazilian Defendants may be served under r. 17.02(p) because, among other things, they ordinarily carry on business in Ontario. Among other things, Diniz is a shareholder of an Ontario company and MGLIT is a wholly owned subsidiary of an Ontario company.

CONCLUSION

69. The Defendants have acted in a high handed, malicious, and reprehensible manner, and in wanton and reckless disregard for Emerita's rights. As such, Emerita is entitled to punitive damages.

70. Emerita pleads and relies upon the *Business Corporations Act*, R.S.O. 1990, c. B.16, the *Securities Act*, R.S.O. 1990, c. s.5, the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

71. Emerita proposes that this action be tried in Toronto.

(Date of issue)

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EMERITA RESOURCES CORP.
Plaintiff

-and-

DAVID PATRICK GOWER et al.
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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