



No. S-148932  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

GIZE YEBEYO ARAYA, KESETE TEKLE FSHAZION AND  
MIHRETAB YEMANE TEKLE

PLAINTIFFS

AND:

NEVSUN RESOURCES LTD.

DEFENDANT

**RESPONSE TO CIVIL CLAIM**

**Filed by:** Nevsun Resources Ltd. (the “Defendant”)

**Part 1:** **RESPONSE TO NOTICE OF CIVIL CLAIM FACTS**

**Division 1 - Defendant’s(s’) Response to Facts**

1. The facts set out in paragraphs 21, 28 and 33 in Part 1 of the Notice of Civil Claim are admitted.
2. The facts set out in paragraphs 1-20, 22-27, 29-32 and 34-52 in Part 1 of the Notice of Civil Claim are denied.

**Division 2 - Defendant’s(s’) Version of Facts**

1. Nevsun’s version of the disputed facts and additional facts are set out in Part 1, Division 3, below.

### **Division 3 - Additional Facts**

#### Introduction

1. In answer to the Notice of Civil Claim as a whole, Nevsun Resources Ltd. (“Nevsun”) denies the Plaintiffs’ and Group Members’ (sometimes hereinafter referred to collectively as the “Plaintiffs”) allegations that subcontractors and the Eritrean military engaged in forced labour, slavery, torture or other abuses in connection with the Bisha Mine, or that Nevsun agreed to or in any way aided, abetted or approved of or condoned such conduct. At all material times, Nevsun was an indirect shareholder and the Bisha Mine was owned and operated by Bisha Mine Share Company (“BMSC”). BMSC prohibited the use of forced labour and abuses of workers at the Bisha Mine and took reasonable steps to ensure that such conduct did not occur.

#### Nevsun and the Bisha Mine

2. Nevsun is a body corporate incorporated under the laws of the Province of British Columbia. Its head office is located at 760 - 669 Howe Street, Vancouver, British Columbia, and its registered and records office is located at 1000 - 840 Howe Street, Vancouver, British Columbia.
3. Nevsun is a reporting issuer, as defined in the *Securities Act*, R.S.B.C. 1996, c. 418, as amended. Its shares are widely-held and are listed for trading on the Toronto Stock Exchange (“TSX”) and the New York Stock Exchange (“NYSE”).
4. Through its wholly and majority owned direct and indirect subsidiaries, Nevsun is engaged in the exploration for, and the development of, mineral resource properties. Consistent with securities laws and practice, accounting rules and general commercial practice, Nevsun’s public disclosures and policies refer to the business and assets of its direct and indirect subsidiaries in a consolidated manner.
5. The Bisha property (the “Bisha Property”) is the principal property owned and operated by BMSC. It is located approximately 150 kilometres west of Asmara, the capital of the State of Eritrea. The Bisha Property hosts a gold, copper and zinc deposit and includes satellite VMS deposits, and covers an area of 46.5 square kilometres.

6. The Bisha mine (the “Bisha Mine”) is located on the Bisha Property. Nevsun Resources (Eritrea) Ltd. (“NREL”), an indirect wholly owned subsidiary of Nevsun, is a 60% shareholder of BMSC. The remaining 40% interest is held by the Eritrean National Mining Corporation (“ENAMCO”).
7. The diagram of the corporate structure that appears in paragraph 23 of the Notice of Civil Claim, as taken from Nevsun’s public disclosure, explains the inter-corporate relationships among Nevsun and each of its wholly and partially owned subsidiaries, the percentage of voting securities legally and beneficially owned and the jurisdiction of incorporation of each such subsidiary.
8. Nevsun Africa (Barbados) Ltd. (“NABL”) owns 100% of the issued and outstanding shares of NREL. Nevsun (Barbados) Holdings Ltd. (“NBHL”) owns 100% of the issued and outstanding shares of NABL. Nevsun owns 100% of the issued and outstanding shares of NBHL.
9. BMSC is incorporated under the laws of the State of Eritrea. NREL, NABL and NBHL are incorporated under the laws of the State of Barbados.

BMSC’s contractors and subcontractors

10. In furtherance of the construction and development of the Bisha Mine, BMSC engaged SENET CC (“SENET”) of South Africa to act as the main engineering, procurement and construction management contractor (EPCM) on the Bisha Mine project. Following the initial construction and development of the Bisha Mine, BMSC engaged SENET to provide additional engineering and contracting services thereafter.
11. As part of its role as EPCM contractor, SENET engaged subcontractors including Segen Construction Company (“Segen”), an Eritrean civil engineering and construction company.
12. As described below, at all material times, SENET and all other contractors and subcontractors providing services to BMSC or SENET in connection with the Bisha Mine were required to refrain from employing Eritrean National Service personnel on extended

service. They were required to refrain from otherwise using forced labour to perform services. They were also required to refrain from violence, crime or abuse, and to comply with BMSC's corporate policies, which prohibited such conduct.

Mereb was not involved in providing services or labour at the Bisha Mine

13. Nevsun denies that Mereb Construction Company ("Mereb") provided services to Segen, SENET or BMSC, as alleged or at all. Alternatively, if Mereb did so, which is denied, Nevsun and BMSC had no knowledge that Mereb was engaged by SENET or Segen, or that it provided services to SENET or Segen or in connection with the Bisha Mine, as alleged or at all.

The Eritrean military was not involved in providing services or labour at the Bisha Mine

14. In specific answer to paragraphs 27, 35, 80, 87, 93(e) and (f) and 94 in Parts 1 and 3 of the Notice of Civil Claim, Nevsun denies that it or BMSC engaged the Eritrean military or agreed with it to build the infrastructure and mine facilities at the Bisha Mine, or to supply labour or services in connection with the Bisha Mine, as alleged or at all.
15. At the material times, Eritrean military personnel were directed by Eritrean public officials or senior military personnel to patrol or secure the perimeter of the Bisha Concession Area, as is the case with other strategic areas throughout the State of Eritrea. This was not the subject of any agreement with Nevsun or BMSC.
16. The Eritrean military and its personnel were and are not subject to the control, direction or supervision of Nevsun or BMSC.

BMSC is separate and distinct from Nevsun

17. NREL and ENAMCO are parties to a Shareholders' Agreement made as of October 26, 2007 (the "Shareholders' Agreement"). The Shareholders' Agreement provides that BMSC shall have up to five directors and NREL and ENAMCO shall be entitled to appoint directors in proportion to their shareholding in BMSC.

18. The Shareholders' Agreement also provides that the board of directors of BMSC shall manage and supervise the conduct of the business of BMSC and have the authorisation to exercise all powers of BMSC except such powers as reserved by law, by BMSC's articles or by the Shareholders' Agreement to the shareholders.
19. Nevsun is not a party to the Shareholders' Agreement.
20. At all material times, BMSC has had a board of directors that has included at least two directors nominated by each of NREL and ENAMCO. BMSC has also had a chief executive with the title General Manager, who was appointed by, and was responsible to, BMSC's board of directors.
21. At all material times, BMSC was managed and operated by its board of directors and BMSC management consistent with its constitutional documents, the Shareholders' Agreement, the Eritrean *Commercial Code* and Eritrean laws of general application.

The State of Eritrea is not a "rogue state"

22. In response to the Notice of Civil Claim as a whole, and in particular paragraphs 1-3, 10-12 and 88-89 in Parts 1 and 3 of the Notice of Civil Claim, Nevsun denies that Eritrea is a "rogue state" with no functioning system of justice.
23. The State of Eritrea obtained its formal independence from Ethiopia in 1993 and is a developing country. It is a member of the United Nations (UN) and, like many other UN member states including, for example, the People's Republic of China, it is governed by a single political party. The State of Eritrea enjoys sovereign immunity consistent with principles of international law and the *State Immunity Act*, R.S.C. 1985, s. 18 (the "SIA"). Eritrea has ratified relevant international conventions including the International Labor Organisation (ILO) *Convention Against Forced Labour* (No. 29) and the ILO *Convention concerning the Abolition of Forced Labour* (No. 105).
24. The State of Eritrea has a system of positive laws, including a *Penal Code*, *Civil Code*, *Commercial Code*, *Civil Procedure Code*, as well as a *Labour Code*, referred to as the *Labour Proclamation No. 118/2001*, which prohibits forced labour.

25. The State of Eritrea also has a functioning court and justice system. This includes courts with specialised jurisdiction, a Labour Board and procedures recognising mediation and arbitration for the private settlement of disputes. The rule of law applies, and state actors including public officials are subject to Eritrean laws and the jurisdiction of the Eritrean courts.

Nevsun is itself a shareholder

26. Nevsun itself is not engaged in a commercial venture or enterprise with the State of Eritrea, as alleged or at all.
27. Nevsun's indirect commercial interest in the Bisha Mine arises from its position as a shareholder of NBHL.
28. Nevsun's corporate structure was not artificial and was created for legitimate commercial, tax and administrative reasons.
29. In response to the Notice of Civil Claim as a whole, and paragraph 86 in particular, the separate corporate personalities of BMSC, NBHL and the other corporations referred to in the Notice of Civil Claim have not been employed for any improper purpose that would justify the court disregarding or piercing their corporate veils in the interests of justice.

BMSC operates the Bisha Mine, not Nevsun

30. The Bisha Mine is an asset of BMSC, not Nevsun.
31. BMSC is a party to a series of agreements with the State of Eritrea and ENAMCO which give rise to its right, title and interest in the Bisha Mine. These agreements include the Mining Agreement made as of December 12, 2007 between BMSC and the State of Eritrea, as represented by the Minister of Energy and Mines (the "Mining Agreement") and the Stabilization Agreement made as of December 12, 2007 between BMSC and ENAMCO (the "Stabilization Agreement")(collectively, the "Project Agreements").
32. Nevsun is not a party to the Project Agreements.

33. BMSC's entitlement to operate the Bisha Mine is subject to the terms of Mining Licenses issued to it by the State of Eritrea in 2008 and again in 2012 (the "Mining Licenses").
34. At the material times, the operational decisions for the Bisha Mine were made by BMSC's management, acting under the supervision of BMSC's board of directors, or by BMSC's board of directors itself. BMSC's operations were required to, did and presently do comply with the Project Agreements, the Mining Licenses, the BMSC Shareholders' Agreement and the laws of the State of Eritrea.
35. As part of its responsibility for the business, affairs and operations of BMSC, BMSC's management selected suppliers and contractors, including SENET, to provide services to BMSC in connection with the operations at the Bisha Mine. BMSC entered into agreements with contractors and BMSC alone – and not Nevsun -- was entitled to and required to monitor and enforce the performance of those agreements.
36. Nevsun itself did not select, train, audit or supervise the conduct of contractors who performed services for BMSC, or subcontractors who performed services for contractors including SENET, in connection with the operations of the Bisha Mine. In particular, Nevsun did not select or have any relationship with Segen, Mereb or the Eritrean military, as alleged or at all. Nevsun did not have any right to, and did not, exercise any authority or control over the activities of Segen, Mereb or the Eritrean military.
37. Nevsun denies that it controlled the operations at the Bisha Mine, or that it exercised complete, effective or any control or authority over the actions of BMSC, Segen, Mereb or the Eritrean military, as alleged or at all. Nevsun further denies that BMSC acted as its agent or that Nevsun is vicariously liable for BMSC's conduct, as alleged or at all.

BMSC required that no forced labour or abuse be used in connection with the Bisha Mine

38. BMSC required that no forced labour or abuse be used in connection with the construction or operation of the Bisha Mine.
39. BMSC adopted corporate policies, including a health and safety policy; an "employee policy"; a social responsibility policy; and a code of conduct. BMSC's policies

prohibited the use of forced labour, crimes or violence by BMSC or its contractors. The use of Eritrean National Service personnel on extended service was specifically prohibited.

40. BMSC also adopted plans, including a Construction, Environmental and Social Management Plan (“CESMP”), consistent with various social and environmental commitments it made in connection with the Bisha Mine project. The CESMP provided that BMSC and SENET would ensure that Eritrean National Service personnel on extended service would not be used by BMSC or its contractors. The CESMP further provided that SENET was responsible for promoting health and safety and worker camp regulations adhering to BMSC’s code of conduct and other policies prohibiting crimes and violence.
41. BMSC also required SENET to agree that it would not employ forced labour and that SENET would adhere to BMSC policies. SENET agreed that it would ensure that subcontractors it engaged to provide services in connection with the Bisha Mine would do likewise.
42. BMSC reasonably relied on SENET to implement and enforce its corporate policies and the CESMP as they applied to subcontractors engaged by SENET, including Segen. BMSC also took reasonable steps of its own to ensure that Segen did not employ forced labour or abusive practices in providing services to the Bisha Mine. These steps included requiring documentary proof that Segen employees had been released from Eritrean National Service; conducting inspections of employment records; conducting inspections of the living and working conditions of Segen employees; and making inquiries of Segen employees and management.
43. Nevsun denies the allegations of forced labour, slavery, torture, cruel and degrading treatment and crimes against humanity set out in the Notice of Civil Claim. If such conduct occurred, which is denied, it did not occur at the Bisha Mine, and Nevsun and BMSC were not aware of it and did not aid or condone it, either expressly or impliedly, as alleged or at all.



The Plaintiffs were not subject to forced labour or abuse

44. Nevsun denies that the Plaintiffs, and in particular, the three named Plaintiffs, were subjected to forced labour or abuse at the Bisha Mine, as alleged or at all.
45. The three named Plaintiffs allege they were forced to work at the Bisha Mine at different time periods, performing different services, and for different employers.
46. In specific answer to paragraphs 36-52 of the Notice of Civil Claim, Nevsun denies that the three named Plaintiffs were employed by Segen or Mereb at or in connection with the Bisha Mine in the period alleged or at all. If they were so employed, which is denied, they provided labour free of coercion and were paid wages consistent with those provided for in applicable collective agreements and consistent with prevailing market conditions in the State of Eritrea for the kind of work performed.
47. Nevsun denies that the Plaintiffs were forced to endure harsh and dangerous working conditions or that they were abused and mistreated, as alleged or at all.

The Plaintiffs' rights are the subject of collective agreements containing grievance mechanisms

48. The terms and conditions of the employment of the Plaintiffs employed by Segen were the subject of a collective agreement between Segen and the union representing Segen's employees (the "Segen Collective Agreement").
49. The Segen Collective Agreement provided, inter alia, that it applied to all employees of Segen, whether members of the union or not; the terms and conditions of the Segen Collective Agreement applied comprehensively to all matters relating to the terms and conditions of the Plaintiffs' work; and that any disputes were first required to be referred to mediation and, failing settlement, to the Eritrean Ministry of Labour and Human Welfare, with a right of appeal to the Eritrean High Court.

**Part 2: RESPONSE TO RELIEF SOUGHT**

1. Nevsun opposes the relief sought in paragraphs 53-58 in Part 2 of the Notice of Civil Claim.
2. Nevsun seeks an order dismissing the Plaintiffs' action with special costs.

**Part 3: LEGAL BASIS**

The Plaintiffs' claims are not appropriately brought as a representative action

1. The Plaintiffs' action is not appropriately brought as a representative action under R. 20-3 of the *Supreme Court Civil Rules* ("SCCR").
2. In particular, and in response to paragraph 56 of the Notice of Civil Claim, Nevsun denies that the Plaintiffs and Group Members have a common interest in the factual and legal issues raised in the action.
3. The resolution of the Plaintiffs' and Group Members' claims will require individual inquiries unsuitable for a representative action under the SCCR.
4. Further or in the alternative, in seeking to have this Court determine the rights of persons who are nationals of the State of Eritrea and other states and who have not had notice of or consented to being parties to this proceeding, and to do so concerning conduct that occurred wholly or substantially in the State of Eritrea, the Plaintiffs are seeking to have the SCCR apply with extra-territorial effect, contrary to s. 92 of the *Constitution Act, 1867*.

The jurisdiction and governing law are those of the State of Eritrea and its organs and courts

5. For the reasons set out below, this Court lacks subject matter competence over the Plaintiffs' claims.
6. Further or in the alternative, British Columbia is not a convenient forum for the determination of the Plaintiffs' claims and the Court should decline to exercise territorial competence and permanently stay this proceeding. Nevsun pleads and relies on the *Court*

*Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28, and in particular, ss. 11 and 12.

7. The Plaintiffs' claims are governed by the laws of the State of Eritrea, and not by British Columbia or Canadian law. The Plaintiffs' claims which seek to pierce the corporate veil of BMSC, NREL, NABL and NBHL to reach Nevsun are governed by the laws of the State of Eritrea and the laws of the State of Barbados.
8. In particular, the Plaintiffs' alleged entitlement to general, aggravated or punitive damages, which is denied, and the quantum of any damages to which the Plaintiffs may be entitled, is governed by the laws of the State of Eritrea and the community standards that apply in the State of Eritrea, and not the Province of British Columbia.
9. The Plaintiffs' claims arise out of the terms and conditions of their employment. By reason of the Segen Collective Agreement and Eritrean law, the claims of the Plaintiffs employed by Segen are the subject of dispute resolution mechanisms conferring exclusive jurisdiction on the Eritrean Ministry of Labor and Human Welfare, with an appeal to the High Court of Eritrea. As a result, this Court has no jurisdiction to hear and determine the Plaintiffs' claims.
10. Further or in the alternative, the Plaintiffs' claims against Nevsun are barred by the "Weber doctrine", enunciated in *Weber v. Ontario Hydro* [1995] 2 S.C.R. 929, as developed and applied in Canadian law.

The Plaintiffs' claims are statute-barred

11. The Plaintiffs' claims are, in whole or in part, statute-barred and Nevsun pleads and relies on the Eritrean *Civil Procedure Code* and Eritrean law governing the time limits for instituting actions.
12. In the alternative, if British Columbia limitations law applies, which is denied, the Plaintiffs' claims are still statute-barred in whole or in part, and Nevsun pleads and relies on the provisions of the *Limitation Act*, S.B.C. 2012, c. 13 and the *Limitation Act*, R.S.B.C 1996, c. 266.

Customary international law does not apply to Nevsun

13. Customary international law, either on its own or as incorporated into the laws of Canada and of the Province of British Columbia, does not apply to corporations. Alternatively, the specific norms of customary international law on which the Plaintiffs rely, whether so incorporated or not, apply to states but not to corporations such as BMSC and Nevsun, which are incorporated under national laws.
14. Further or in the alternative, customary international law as incorporated into the laws of Canada and of the Province of British Columbia, either generally or in respect of the specific customary norms relied on by the Plaintiffs, does not create a private law cause of action and a right to recover damages.
15. In particular, the law of British Columbia does not recognise a private law cause of action for damages for forced labour, slavery, torture, cruel and inhuman treatment or crimes against humanity, as those concepts are defined in customary international law. Nevsun denies that it engaged in or became liable for any such conduct, as alleged or at all.
16. Further or in the alternative, Nevsun denies that the prohibitions against forced labour and cruel and inhuman treatment are norms of customary international law or that, if they are such norms, which is denied, that they are *jus cogens* norms.

The Plaintiffs' claims are not justiciable and are barred by the act of state doctrine and by state immunity

17. The Plaintiffs' claims against Nevsun, in whole or in part, depend on establishing wrongful conduct by the State of Eritrea, its public officials and its military, all of which is alleged to have occurred within the sovereign territory of the State of Eritrea. Consistent with the equality of sovereign states and the principle of international comity, the legal validity of sovereign acts of foreign states occurring within their own territory is not justiciable and cannot be the subject of adjudication by this Court or by the municipal courts of any state other than the State of Eritrea. This is referred to as the "act of state doctrine". Nevsun pleads and relies on the act of state doctrine as both a jurisdictional bar to the Plaintiffs' claims and a substantive defence.

18. Further, the Plaintiffs' claims against Nevsun, in whole or in part, depend on establishing the liability of the State of Eritrea for the conduct alleged. The State of Eritrea and its public officials acting as such cannot be liable for the conduct alleged by reason of the *SIA* and as a result, Nevsun cannot be liable for any cause of action that depends on establishing the liability of the State of Eritrea or its officials. Nevsun pleads and relies on the *SIA* as a whole.

Nevsun did not aid or abet, acquiesce in or fail to prevent wrongful conduct it had a duty to stop

19. Further or in the alternative, and in answer to the Notice of Claim as a whole and in particular, paragraphs 76 and 83-86 of the Notice of Civil Claim, Nevsun did not aid and abet, order, solicit, approve of, acquiesce in, contribute to or otherwise assist in wrongful conduct by BMSC, Segen, Mereb or the Eritrean military, contrary to customary international law or applicable domestic law, as alleged or at all.
20. Further or in the alternative, and in answer to the Notice of Claim as a whole and in particular, subparagraphs 76(e) and (g) of the Notice of Civil Claim, Nevsun did not fail to prevent wrongful conduct by BMSC, Segen, Mereb or the Eritrean military that it had a duty and/or the effective control and therefore responsibility to prevent, as alleged or at all.

Nevsun is not vicariously liable for the acts of BMSC or Segen, Mereb or the State of Eritrea

21. In response to the Notice of Civil Claim as a whole, and in particular paragraphs 86-90, Nevsun exercised no control or authority over the acts of Segen, Mereb or the State of Eritrea, including the Eritrean military. Segen was an independent contractor, and as a matter of law, neither Nevsun nor BMSC was responsible for its conduct. Further, BMSC did not authorise and in fact prohibited the use of forced labour or other abusive treatment. As a result, Nevsun cannot be vicariously liable for any of the wrongful conduct alleged if it occurred, which is denied.

Nevsun did not owe the Plaintiffs a duty of care and was not negligent

22. Nevsun denies that it owed the Plaintiffs a duty of care as alleged or at all, or if it did owe a duty of care, which is denied, that it breached the standard of care required or that any such breach, also denied, was the cause-in-fact or proximate cause of the Plaintiffs' losses, which are also denied.
23. The Plaintiffs' claims do not fall within an established category in which a duty of care has been found to be owed, and would require the recognition of a novel duty of care on the part of Nevsun. A novel duty of care should not be recognised. There was not a sufficiently close relationship or relationship of proximity between the Plaintiffs and Nevsun so as to give rise to a duty of care, or, in the alternative, if there was such a relationship or prima facie duty of care, which is denied, it is negated by policy considerations, including the limited liability of BMSC, NREL, NABL and NBHL recognised under Eritrean, Barbadian and Canadian law, as well as Parliament's decision not to recognise such a duty in legislation.
24. Further or in the alternative, and in answer to paragraphs 32-34 and 91-93 of the Notice of Civil Claim, Nevsun's public statements regarding, for example, its adoption of the 2006 International Finance Corporation ("IFC") standards on social and environmental performance, and other corporate social responsibility principles, which it did as a matter of Nevsun general corporate policy, did not constitute an undertaking to the Plaintiffs or an undertaking that was relied on by the Plaintiffs, so as to give rise to a duty of care.

The corporate veil precludes the Plaintiffs' claims

25. At the material times, Nevsun's interest and involvement in the Bisha Mine was through its position as a shareholder of NBHL. The Plaintiffs' claims improperly seek to pierce the corporate veils of NBHL, NABL, NREL and BMSC, and are contrary to well-established principles that limited liability corporations have a separate and distinct legal personality from that of their shareholders, and shareholders are not liable for the debts, obligations, defaults or acts of the company in which they hold shares. Nevsun pleads and relies on the *Companies Act (Barbados)*, L.R.O. 2002, Chapter 308, and in particular,

s. 56, as well as the *Commercial Code (Eritrea)* and other relevant laws of the State of Eritrea.

Nevsun did not conspire to injure the Plaintiffs

26. In response to paragraphs 94-98 of the Notice of Civil Claim, Nevsun denies that it entered into an unlawful agreement with BMSC, Segen, Mereb or the State of Eritrea for the supply of forced labour to the Bisha Mine, as alleged or at all.
27. In particular, Nevsun denies that there was any such agreement or conspiracy to injure, or that it was a party to an agreement of any kind with BMSC, Segen, Mereb or the State of Eritrea.

The Plaintiffs are not entitled to restitutionary relief

28. In response to paragraphs 99-104 of the Notice of Civil Claim, Nevsun denies that it has been unjustly enriched, as alleged or at all.
29. BMSC paid fair value for labour and other services to its contractors and SENET did the same. If the Plaintiffs were the subject of any deprivation, which is denied, Segen, Mereb or the Eritrean military were the beneficiaries of the corresponding enrichment, and not BMSC or Nevsun.
30. Further or in the alternative, if there was a deprivation and corresponding enrichment, BMSC's contractual rights with its contractors, which included terms prohibiting forced labour and abuse, and Nevsun's interest as a shareholder of NBHL are valid juristic reasons for any benefits received by Nevsun.
31. As set out above, Nevsun is a shareholder of NBHL. It does not own an interest in the Bisha Mine and there is no direct connection between any unlawful conduct, which is denied, and Nevsun's shares in NBHL that could give rise to the imposition of a remedial constructive trust, an accounting or other restitutionary or equitable relief.
32. Further or in the alternative, the Plaintiffs have not demonstrated that monetary damages would be insufficient. Further, there is not a sufficiently direct connection between any

alleged wrongful conduct by Nevsun, which is denied, and its shares in NBHL so as to justify the imposition of a remedial constructive trust or other proprietary remedy.

33. Further or in the alternative, the imposition of a proprietary remedy including an accounting would be unjust in view of Nevsun's status as a widely-held public company and the public markets shareholders who have bought and sold Nevsun's shares and accordingly changed their position in reliance on the state of Nevsun's existing rights.

The Plaintiffs have not suffered any loss or damage

34. Further or in the alternative, Nevsun denies that the Plaintiffs suffered loss and damage, as alleged or at all.
35. Further or in the alternative, if the Plaintiffs did suffer loss and damage, which is denied, the Plaintiffs failed to mitigate their losses.
36. Further or in the alternative, if the Plaintiffs did suffer loss and damage, which is denied, it resulted from or was caused or contributed to by the fault of third parties, and any damages should be apportioned accordingly. Nevsun pleads and relies on the laws of the State of Eritrea in this regard.



The Plaintiffs are not entitled to aggravated or punitive damages

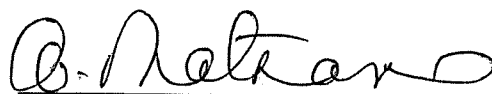
37. Newsun denies that it has acted in a malicious, reckless or wanton manner that is deserving of condemnation, as alleged or at all.

Defendant's address for service: Fasken Martineau DuMoulin LLP  
2900 - 550 Burrard Street  
Vancouver, BC V6C 0A3

Fax number address for service: 604-631-3232

E-mail address for service (if any): n/a

Dated: FEBRUARY 13, 2015



Signature of Andrew Nathanson

Lawyer for Defendant

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any part at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

The Solicitors for the Defendant Newsun Resources Ltd. are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 2900 - 550 Burrard Street, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Andrew I. Nathanson/259655.00006)