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16 **UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

18 Brown v. Kinross Gold U.S.A., Inc.

Case No. CV-S-02-0605-PMP-(RJJ)

**ORDER AND FINAL
JUDGMENT OF DISMISSAL WITH
PREJUDICE**

20 This Document Related To: All Actions

22 WHEREAS a consolidated class action is currently pending before the court
23 entitled *Brown v. Kinross Gold U.S.A., Inc., et al.*, U.S.D.C. Nev., CV-S-02-0605-
24 PMP(RJJ) (the "Action");

1 WHEREAS, this matter came before the Court pursuant to the Court's Order
2 Preliminarily Approving Settlement, Settlement Class Certification, and Providing for
3 Notice to the Class dated November 12, 2008 ("Preliminary Approval Order") (Dkt.
4 295), on Lead Plaintiffs' Motion for Final Approval of Settlement dated January 22, 2009
5 (the "Final Approval Motion");

6 WHEREAS, pursuant to the Preliminary Approval Order, the Court preliminarily
7 approved the Stipulation and Agreement of Settlement dated as of November 7, 2008 and
8 the exhibits thereto (the "Stipulation") entered into by Lead Plaintiffs and Class
9 Representatives Robert A. Brown ("Brown"), Glenbrook Capital LP ("Glenbrook"),
10 Andrew D. Kaufman ("Kaufman"), George P. Drake ("Drake"), and CN&L Investment
11 Corp. ("CN&L") (collectively "Lead Plaintiffs"), by and through their undersigned
12 counsel of record, Berger & Montague, P.C., Reginald H. Howe (individually "Lead
13 Counsel" or collectively "Co-Lead Counsel") and Kummer Kaempfer Bonner Renshaw
14 & Ferrario ("Liaison Counsel") (collectively, the "Plaintiffs' Counsel"), in the above-
15 captioned class action litigation (the "Action"), on behalf of themselves and the
16 remaining members of the Class certified by Order of this Court dated June 14, 2005, on
17 the one hand; and defendants Kinross Gold U.S.A., Inc. ("Kinross USA"), Kinross Gold
18 Corporation ("Kinross"), and Kinam Gold Inc. ("Kinam") (collectively the "Kinross
19 Defendants") and Robert M. Buchan ("Buchan") (collectively "Defendants"), by and
20 through their attorneys of record Lewis & Roca LLP, and Parr Brown Gee & Loveless,
21 P.C.¹ (collectively, "Defendants' Counsel");

22
23 _____
24 ¹ The Plaintiffs and Defendants, as defined in this Order, are collectively referred to as
the "Parties."

1 WHEREAS, the Parties having made application by and through the Final
2 Approval Motion, pursuant to Federal Rule of Civil Procedure 23(e), for an order finally
3 approving and implementing the Settlement of this Action, in accordance with the
4 Stipulation which, together with the Exhibits annexed to the Stipulation, sets forth the
5 terms and conditions for a proposed settlement of the Action and for dismissal of the
6 Action with prejudice upon the terms and conditions set forth therein;

7 WHEREAS, all defined terms contained in this Order shall have the same
8 meanings as set forth in the Stipulation; and

9 WHEREAS, due and adequate notice having been given to the Settlement Class
10 as required in said Preliminary Approval Order, the Court having considered all papers
11 filed and proceedings had herein, and otherwise being fully informed in the premises and
12 good cause appearing therefor,

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

14 1. This Court has jurisdiction over the subject matter of the Litigation and
15 over all parties to the Litigation, including all Members of the Settlement Class.

16 2. "Settlement Class" shall mean Lead Plaintiffs and all Persons and
17 entities in any capacity (whether individual, class, representative, legal, equitable or
18 otherwise), including their respective executors, administrators, representatives, agents,
19 attorneys, successors, heirs and/or assigns, who: (1) tendered shares of the \$3.75 Series
20 B Convertible Preferred Stock of Kinam Gold Inc. (formerly known as the \$3.75 Series
21 B Convertible Preferred Stock of Amax Gold Inc.) to Kinross Gold Corporation and/or
22 Kinross Gold U.S.A., Inc., pursuant to the February 20, 2002, Offer to Purchase all
23 Publicly Held Shares of the \$3.75 Series B Convertible Preferred Stock of Kinam Gold
24 Inc. at \$16.00 Per Share (as amended March 21, 2002) ("Tenderor Subclass"); (2) hold

1 shares of the \$3.75 Series B Convertible Preferred Stock of Kinam Gold Inc. (formerly
2 \$3.75 Series B Convertible Preferred Stock of Amax Gold Inc.) as of the date of this
3 Order, (“Holder Subclass”); or (3) did not tender shares of the \$3.75 Series B
4 Convertible Preferred Stock of Kinam Gold Inc. (formerly \$3.75 Series B Convertible
5 Preferred Stock of Amax Gold Inc.) pursuant to February 20, 2002, Offer to Purchase
6 all Publicly Held Shares of the \$3.75 Series B Convertible Preferred Stock of Kinam
7 Gold Inc. at \$16.00 Per Share (as amended March 21, 2002), by Kinross Gold
8 Corporation and Kinross Gold U.S.A., Inc., but have since sold such shares directly to
9 Kinross Gold Corporation, Kinam Gold Inc. or Kinross Gold U.S.A., Inc. (“Late-
10 Tenderor Subclass”). Excluded from the Settlement Class and each of its three
11 subclasses are the Defendants, their current and former officers and directors, affiliates,
12 legal representatives, heirs, predecessors, successors and assigns, and any entity in
13 which any Defendant or their current or former officers or directors has a controlling
14 interest or of which any Defendant is a parent or subsidiary. Also excluded from the
15 Settlement Class (except as explained below) are persons who have timely requested
16 exclusion from the Settlement Class pursuant to the terms of this Stipulation or order of
17 the Court. Any person or entity who has timely requested exclusion from the Settlement
18 Class pursuant to the terms of this Stipulation or order of the Court are not bound by
19 this Order and Final Judgment except to the extent that, as provided in paragraph 3
20 below, and as set forth in the Stipulation and in the Plan of Allocation, all shares of the
21 \$3.75 Series B Convertible Preferred Stock of Kinam Gold, Inc., owned or otherwise
22 held by any member of the Holder Subclass or any transferee, successor, heir, or assign
23 thereof, whether or not the owner elects to be excluded from the Settlement Class, will
24 be and hereby are forever terminated and cancelled and not less than \$50.00 per share

1 (less any claim for attorneys' fees and expenses by Plaintiffs' Counsel), will be held in
2 escrow for the benefit of any member of the Holder Subclass who has submitted a valid
3 and timely request for exclusion from the Settlement.

4 3. As set forth in the Plan of Allocation and Stipulation, all shares of the
5 \$3.75 Series B Convertible Preferred Stock of Kinam Gold, Inc., owned or otherwise
6 held by any member of the Holder Subclass or any transferee, successor, heir, or assign
7 thereof, whether or not the owner elects to be excluded from the Settlement Class, will be
8 and hereby are forever terminated and cancelled effective immediately upon entry of this
9 Order. Upon entry of this Order, such holders shall not be shareholders, or have any claim as
10 shareholders, of Kinam Gold Inc., Kinross Gold U.S.A., Inc., or Kinross Gold Corporation
11 based on the cancelled \$3.75 Series B Convertible Preferred Stock, and the only claim such
12 persons or entities shall have with respect to the cancelled \$3.75 Series B Convertible
13 Preferred Stock shall be a claim to the portion of the Settlement Fund allocated to the Holder
14 Subclass under the Plan of Allocation as approved by this Court. In order to recover their
15 *aliquot* share of the Settlement, such Holders shall not hereafter seek to sell, barter, transfer,
16 encumber, or otherwise dispose of their shares.

17 4. The Court hereby finally approves the Settlement set forth in the
18 Stipulation and finds that:

19 (a) said Stipulation is, in all respects, fair, reasonable and adequate
20 and in the best interest of the Settlement Class;

21 (b) there was no collusion in connection with the Stipulation;

22 (c) the Stipulation was the product of informed, arm's-length
23 negotiations among competent, able counsel; and

24 (d) the record is sufficiently developed and complete to have enabled

1 the Lead Plaintiffs and Defendants to have adequately evaluated and considered their
2 positions.

3 5. The Settling Parties are hereby authorized and directed to perform the
4 terms of the Stipulation.

5 6. The Court hereby dismisses the Amended Complaint (Dkt. No. 69), the
6 Litigation, and all Settled Class Claims of the Settlement Class with prejudice, without
7 costs as to any Settling Party, except as and to the extent provided in the Stipulation,
8 any separate order on attorneys' fees or reimbursement of expenses from the Settlement
9 Fund, and as otherwise set forth in this Order.

10 7. Upon the Effective Date of this Order, the Lead Plaintiffs shall, and each
11 of the Settlement Class Members shall be deemed to have, and by operation of the
12 Judgment shall have, fully, finally, and forever released, relinquished and discharged all
13 Settled Class Claims against the Released Persons, whether or not such Settlement
14 Class Member executes and delivers the Proof of Claim and Release.

15 8. All Settlement Class Members are hereby forever permanently barred,
16 enjoined, and restrained from commencing, prosecuting, or asserting any claim based
17 upon, relating to, or arising out of ownership of shares of the \$3.75 Series B Convertible
18 Preferred Stock of Kinam Gold, Inc. or the Settled Class Claims against any of the
19 Released Persons.

20 9. Upon the Effective Date hereof, Defendants and the Related Parties shall
21 be deemed to have, and by operation of this Judgment shall have, fully, finally, and
22 forever released, relinquished and discharged all Settled Defendants' Claims against
23 each and all of the Settlement Class Members, Lead Plaintiffs, Plaintiffs' Lead Counsel
24 and counsel to the plaintiffs. All Defendants are hereby permanently barred, enjoined,

1 and restrained from commencing, prosecuting or asserting any claim for contribution
2 against any other Defendant or Related Party based upon, relating to, or arising out of
3 the Settled Class Claims.

4 10. The Notice of Proposed Settlement of Class Action given to the
5 Settlement Class was the best notice practicable under the circumstances, including the
6 individual notice to all Members of the Settlement Class who could be identified
7 through reasonable effort. Said notice provided the best notice practicable under the
8 circumstances of these proceedings and of the matters set forth therein, including the
9 proposed Settlement set forth in the Stipulation, to all Persons entitled to such notice,
10 and said notice fully satisfied the requirements of Federal Rule of Civil Procedure 23
11 and the requirements of due process as well as the requirements of the Private Securities
12 Litigation Reform Act.

13 11. Any Plan of Allocation submitted by Plaintiffs' Lead Counsel or any
14 order entered regarding any attorneys' fee and expense application shall in no way
15 disturb or affect the Final Judgment and shall be considered separate from this Order
16 and Final Judgment.

17 12. Neither the Stipulation nor the settlement contained therein, nor any act
18 performed or document executed pursuant to or in furtherance of the Stipulation or the
19 Settlement: (a) is or may be deemed to be or may be used as an admission of, or
20 evidence of, the validity of any Settled Class Claims, or of any wrongdoing or liability
21 of the Defendants, or their respective Related Parties, or (b) is or may be deemed to be
22 or may be used as an admission of, or evidence of, any fault or omission of any of the
23 Released Persons in any civil, criminal or administrative proceeding in any court,
24 administrative agency or other tribunal. Released Persons may file the Stipulation

1 and/or the Judgment from this action in any other action that may be brought against
2 them in order to support a defense or counterclaim based on principles of *res judicata*,
3 collateral estoppel, release, good faith settlement, judgment bar or reduction or any
4 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

5 13. Without affecting the finality of this Order and Final Judgment in any
6 way, this Court hereby retains continuing jurisdiction over: (a) implementation of the
7 Stipulation and of this Settlement and any award or distribution of the Settlement Fund,
8 including interest earned thereon; (b) all proceedings with respect to the administration,
9 processing and determination of claims described in the Settlement, including
10 disposition of the Settlement Fund and the Excluded Holder Fund, and the
11 determination of all controversies relating thereto, including disputed questions of law
12 and fact with respect to the validity of claims; (c) hearing and determining applications
13 for attorneys' fees, interest and expenses in the Litigation; (d) any award of expenses
14 and/or service awards to Lead Plaintiffs; (e) enforcing any equitable relief included
15 within this Order and Final Judgment of Dismissal with Prejudice; and (f) all parties
16 hereto for the purpose of construing, enforcing and administering the Stipulation and
17 this Order and Final Judgment of Dismissal with Prejudice.

18 14. Without further order of the Court, the Settling Parties may agree to
19 reasonable extensions of time to carry out any of the provisions of the Stipulation.

20 15. As this Order and Final Judgment dismisses all claims against all
21 Defendants, this Court expressly finds that there is no just reason for delay in the entry
22 of this Order and Final Judgment of Dismissal with Prejudice and immediate entry by
23 the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules
24 of Civil Procedure.

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IT IS SO ORDERED.

Dated: January 29, 2009



THE HONORABLE PHILIP M. PRO
UNITED STATES DISTRICT JUDGE