

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Agency for Policy Coordination on State
Property, Erdenet Mining Corporation, Erdenes
Oyu Tolgoi LLC,

Plaintiffs,

- and -

Batbold Sukhbaatar, Ganzorig Chimiddorj, Tuul
Ulambayar, Nyamdalai Ochirbat, Cheong Choo
Young, Kim Hak Seon, Kim Yoonjung, Lee Yu
Jeong, Rhee Byung Wook, Kang Eun Joo,
Battushig Batbold, Baloas Inc., Baloas Limited,
Lovitas, Inc., Lovitas Limited, Glowassets
Limited,

Defendants.

Index No. _____

SUMMONS

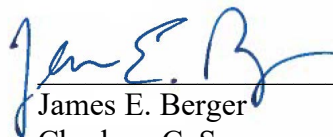
TO THE ABOVE-NAMED DEFENDANTS:

(See attached List of Defendants with Addresses)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiffs' attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is CPLR § 503(a). Plaintiffs designate New York County as the place of trial.

Dated: New York, New York
November 23, 2020



James E. Berger
Charlene C. Sun
Joshua S. Wan

KING & SPALDING LLP
1185 Avenue of the Americas
New York, NY 10036
Tel: (212) 556-2100
Fax: (212) 556-2222
jberger@kslaw.com
csun@kslaw.com
jwan@kslaw.com

*Attorneys for Plaintiffs Agency for Policy
Coordination on State Property, Erdenet Mining
Corporation, Erdenes Oyu Tolgoi LLC*

List of Defendants with Addresses**Batbold Sukhbaatar**

Apt. 13, Bella Vista Building
11th Khoroo, Khan-Uul District, Ulaanbaatar
Mongolia

Ganzorig Chimiddorj

Door 2, Building 28/1, Mahatma
Gandhi, Stadium Orgil
18th khoroo, KhanUul District, Ulaanbaatar
Mongolia

Tuul Ulambayar

Apt. 14, Building 5
12th khoroolol, 3rd Khoroo, Bayanzurkh District, Ulaanbaatar
Mongolia

Nyamdalai Ochirbat

Apt 12, 19A, Chinggis Avenue
1st khoroo, Sukhbaatar District, Ulaanbaatar
Mongolia

Cheong Choo Young

Flat 4B, 1/F., Hong Yuen Court
No 1-5 Tak Shing Street, Kowloon
Hong Kong

Kim Hak Seon

Flat 4B, 1/F., Hong Yuen Court
No 1-5 Tak Shing Street, Kowloon
Hong Kong

Kim Yoonjung

Flat A, 35/F., The Westminster Terrace
2A Yau Lai Road
Yau Kum Tao, Ting Kau, Tsuen Wan, New Territories
Hong Kong

Lee Yu Jeong

Flat A, 35/F., The Westminster Terrace
2A Yau Lai Road
Yau Kum Tao, Ting Kau, Tsuen Wan, New Territories
Hong Kong

Rhee Byung Wook

Flat 4B, 1/F., Hong Yuen Court
No 1-5 Tak Shing Street, Kowloon
Hong Kong

Kang Eun Joo

103-Dong, 201-Ho, 55, Jichuk-Ro
Deogyang-Gu, Goyang-Si, Gyeonggi-Do
The Republic of Korea

Battushig Batbold

Bella Vista Building 200-215
Khan-Uul District, 11th Khoroo, Ulanbaatar
Mongolia

Baloas Inc.

CT Corporation System
28 Liberty Street
New York, NY 10005
United States of America

Baloas Limited

Vistra Corporate Services Centre
Wickhams Cay II
Road Town
Tortola
VG1110
British Virgin Islands

Lovitas, Inc.

CT Corporation System
28 Liberty Street
New York, NY 10005
United States of America

Lovitas Limited

Vistra Corporate Services Centre
Wickhams Cay II
Road Town
Tortola
VG1110
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Vistra Corporate Services Centre
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Complaint

The Agency for Policy Coordination on State Property of Mongolia (the “Agency”),
Erdenet Mining Corporation (“Erdenet”), Erdenes Oyu Tolgoi LLC (“EOT”) (collectively, the
“Plaintiffs”), represented by the Metropolitan Prosecutor’s Office (on behalf of the State of
Mongolia and upon the request of the Plaintiffs), by and through their undersigned counsel,
allege as follows:

1. Plaintiffs bring this action in connection with their efforts to recover losses
suffered as a result of illegal and fraudulent acts in connection with two of Mongolia’s most
prized natural resources, the Erdenet copper mine and the Oyu Tolgoi copper-gold mine,
committed by Batbold Sukhbaatar, Ganzorig Chimiddorj, Tuul Ulambayar, Nyamdalai Ochirbat,
Cheong Choo Young, Kim Hak Seon, Kim Yoonjung, Lee Yu Jeong, Rhee Byung Wook, Kang
Eun Joo (collectively, the “Individual Defendants”), discovery of which the Individual

Defendants have attempted to thwart through concerted efforts to conceal and secrete their assets in this jurisdiction.

2. The Agency is the Mongolian government agency that owns and manages state-owned enterprises in various industry sectors, including energy production, mining, and transport. The Agency is the 100 percent shareholder of Erdenet.¹

3. Plaintiff Erdenet is a state-owned mining company that owns Mongolia's mining interests in the Erdenet mine, one of the largest copper and molybdenum mines in the world. The mine is located in the Orkhon province of Mongolia.

4. Plaintiff EOT is the 34% shareholder of Oyu Tolgoi LLC, the project company which controls the operation of the Oyu Tolgoi mine, a copper-gold project in Mongolia's Ömnögovi Province in the South Gobi Desert and one of the world's largest new copper-gold mines. In December 2011, Defendant Batbold Sukhbaatar ("Batbold") created EOT to hold the Mongolian State's share in the Oyu Tolgoi project.

5. Defendant Batbold is the former Prime Minister of Mongolia, a sitting member of the Mongolian parliament, and a businessman. Batbold has held several powerful political positions in Mongolia and in the Mongolian People's Party, including Minister of Foreign Affairs (2008-2009), Minister of Industry and Trade (2004-2006), and Member of the Leadership Council of the Mongolian People's Revolutionary Party (the former name of the Mongolian People's Party) (2001-2005). During Batbold's tenure as Prime Minister from 2009 to 2012, he had effective control of the Plaintiffs' natural resources, and through his own wrongful actions, as well as through actions of others acting in concert with him or taken on his behalf, Batbold

¹ At the time of the events described below, Erdenet was co-owned by the State Property Committee of the Mongolian government (51%) and Russian state-owned entity the State Corporation for Assistance to Development, Production and Export of Advanced Technology Industrial Product ("Rostec"). On January 15, 2018, Erdenet became 100% owned by the Agency.

wrongfully diverted very significant assets owned by the Plaintiffs to accounts held by others on his behalf or under his direction.

6. Defendant Chimiddorj Ganzorig (“Ganzorig”) is a Mongolian citizen who served as Director General of Erdenet during Batbold’s tenure as Prime Minister. It is likely that Batbold controlled Erdenet and/or directed Ganzorig to sign contracts with several companies that Batbold beneficially owned (as described further below).

7. Defendants Tuul Ulambayar, Nyamdalai Ochirbat, Cheong Choo Young, Kim Hak Seon, Kim Yoonjung, Lee Yu Jeong, Rhee Byung Wook, Kang Eun Joo, and Battushig Batbold² are Mongolian and South Korean citizens who assisted or acted for the benefit of Batbold, including by (i) facilitating the diversion of the Plaintiffs’ assets; and (ii) holding funds or assets for the ultimate beneficial ownership of Batbold, including funds derived from the sale of the Plaintiffs’ valuable natural resources and from kickbacks that Batbold received.

8. Each of the Individual Defendants, acting individually or in concert with others, has further conspired to transfer, disguise, and hide the ownership of the illegally diverted funds. The Individual Defendants have done so by establishing a vast network of foreign entities, including entities registered in the BVI, Hong Kong, Mongolia, Singapore, the UK, the US, and several other jurisdictions. Several of these companies own or owned valuable properties, including in Hong Kong, the UK and the US, and our review of bank statements has revealed that significant funds traceable to Batbold flow between these entities. Plaintiffs believe that the Individual Defendants’ labyrinthine system of entities was also used for the purposes of

² Battushig Batbold is Batbold Sukhbaatar’s son.

shielding the ill-gotten assets from discovery by the Mongolian authorities and from the jurisdiction of the Mongolian courts.

9. Defendants Baloas Inc., Baloas Limited, Lovitas Inc., Lovitas Limited, and Glowassets Limited (together, the “Entity Defendants”) are New York corporations and British Virgin Islands (“BVI”) companies that the Individual Defendants established in order to conceal their ill-gotten gains from the Mongolian government. Together, these entities own two valuable apartments in New York — Unit 12E, 21 East 61st Street, New York, NY 10065, and Unit 58D, 230 West 56th Street, New York, NY 10019 (collectively, the “Properties”) — that were obtained using the proceeds of the Individual Defendants’ unlawful actions. Plaintiffs believe that the Entity Defendants are mere corporate shells being used for the diversion of the Individual Defendants’ illegally-obtained proceeds, and that the Entity Defendants are alter egos of the Individual Defendants that control those entities, including but not limited to Batbold, Cheong Choo Young, Kim Hak Seon, and Rhee Byung Wook.

10. Plaintiffs are also aware that BVI company Glowassets Limited has multiple connections to Batbold’s proxies. Glowassets Limited controls a bank account held at HSBC Bank USA, N.A. in New York (the “New York Bank Account”). The funds in the New York Bank Account are believed to have been obtained through the Individual Defendants’ illegal transactions.

11. The Court has subject matter jurisdiction to adjudicate this case and grant the relief sought herein, and the relief sought herein exceeds the jurisdiction of all courts of inferior jurisdiction. Neither Batbold nor any of the Defendants may divest this Court of subject-matter jurisdiction by claiming immunity, as Batbold’s misconduct was undertaken in his personal capacity, for his personal benefit, outside of his scope of authority, and was deliberately hidden

from the public. There is also no interference with the sovereignty of Mongolia in this case because Plaintiffs' claims are being prosecuted by the Metropolitan Prosecutor's Office, an instrumentality of Mongolia.

12. The Individual Defendants are the actual or beneficial owners of the Properties and the New York Bank Account. This Court has *in rem* jurisdiction over the Properties and the New York Bank Account on account of their presence in New York. The Court also has *in rem* jurisdiction over the shares of the New York corporations, Lovitas Inc. and Baloas Inc., which directly hold the Properties.

13. The Court has *in personam* jurisdiction over Lovitas Inc. and Baloas Inc. because they are New York corporations. With respect to the claim for declaratory judgment, as set forth at paragraphs 97 to 99, this Court may exercise personal jurisdiction over the other Defendants which control Lovitas Inc. and Baloas Inc., based on their status as alter egos of those New York corporations. With respect to the conversion and aiding and abetting conversion claims, as set forth at paragraphs 85 to 96, the Court may exercise specific personal jurisdiction over the other Defendants based on their deliberate diversion of the converted property into this state.

14. The fact that the Individual Defendants hold property located in New York is neither fortuitous nor coincidental. The Individual Defendants deliberately transferred their ill-gotten gains to a network of on-shore and off-shore entities around the world to shield those assets from discovery by the Mongolian authorities. As they have done in other jurisdictions, the Individual Defendants purchased their New York assets using New York corporations that are in turn held by BVI entities. As a result, the Individual Defendants have turned their ownership interests in illiquid real estate into highly liquid shares that can be transferred to other individuals or entities anywhere in the world almost instantaneously. Because the Individual Defendants

have undertaken to shield their illegally obtained assets from the Mongolian courts' jurisdiction and to avoid potential attachment thereof, and have done so intentionally by establishing New York corporations and transferring diverted assets to this jurisdiction through those corporations, this Court may exercise *quasi in rem* jurisdiction over the shares of the New York corporations, the Properties, and the New York Bank Account, and adjudicate this case on that basis.

15. Venue is proper in this county pursuant to Section 503(a) of the Civil Practice Law and Rules ("CPLR").

Facts

I. The Parties' Dispute

16. This proceeding arises out of a series of illegal and fraudulent transactions undertaken by the Individual Defendants, acting in concert, that have caused harm to the Plaintiffs, and by extension, to Mongolia. The Plaintiffs, as owners of the assets that were illegally diverted, have consequently been forced to take legal action to defend their interests.

17. The transactions, which were facilitated by Batbold and his proxies during Batbold's tenure as Prime Minister of Mongolia, involved two of Mongolia's most prized natural resources, the Erdenet copper mine and the Oyu Tolgoi copper-gold mine. After executing these transactions and diverting assets belonging to the Plaintiffs to accounts within their own control, the Individual Defendants further transferred, disguised, and concealed the ownership of their ill-gotten gains, including through the use of a complex network of offshore and onshore corporate structures and proxies across numerous jurisdictions.

18. To remedy the harm caused to the Plaintiffs through these illegal transactions, the Plaintiffs seek recovery from the Individual Defendants of compensatory damages, as well as disgorgement of any gains, revenues, and profits the Individual Defendants accrued through their wrongdoing, in the amount of MNT\$ 713,575,000,000 (approximately \$250 million).

II. The Illegal Transactions

A. The Erdenet Mine Scheme: The Individual Defendants' Corrupt and Illegal Transactions Relating to the Erdenet Mine

19. Beginning in October 2009, Batbold, as Prime Minister, oversaw the State Property Committee, which at the time was the majority owner of Erdenet.³ At that time, Ganzorig was the Director General of Erdenet. Batbold's tenure as Prime Minister ended on August 10, 2012.

20. In or around 2019, Plaintiffs discovered that the Individual Defendants had concluded illegal transactions with a number of foreign legal entities to unlawfully enrich Batbold. Specifically, Erdenet entered into valuable contracts for the trade of copper and molybdenum concentrate with at least four newly-formed companies: Catrison Limited ("Catrison"), Cliveden Trading AG ("Cliveden"), Genetrade Limited ("Genetrade"), and Lidex Holdings Limited ("Lidex") (although, at present, Plaintiffs only advance legal claims in the Mongolian court in respect of the first three entities). Although Catrison, Cliveden, Genetrade, and Lidex are based, respectively, in Hong Kong, Switzerland, the BVI, and Hong Kong, they are controlled on behalf of Batbold by the Individual Defendants Cheong Choo Young ("Cheong") and Kim Hak Seon ("Hak Seon"), who are husband and wife and proxies of Batbold. These "insider" transactions allowed Batbold and his proxies to profit directly from these contracts. At no point did Batbold disclose to Erdenet or the Agency his involvement with, or links to, these companies, contrary to Mongolian law.

³ Since the end of his tenure as Prime Minister, Batbold has been a member of the Mongolian Parliament.

a) Erdenet's Contracts with Catrison

21. Catrison is an active Hong Kong company established on February 8, 2011. Hak Seon is its 100% shareholder and Kim Yoonjung ("Yoonjung") is its sole director.⁴ Hak Seon maintained and used the e-mail address "catrisonlimited@yahoo.com" to communicate with Batbold and his son Battushig. Batbold did not use his official parliamentary e-mail address to communicate with Hak Seon, but instead used his personal Yahoo e-mail address. Even though he does not appear to hold any official position in Catrison, Cheong has communicated with Erdenet on behalf of Catrison.

22. On February 14, 2011, Catrison secured a contract with Erdenet to purchase 150,000 wet metric tonnes ("WMT") of copper concentrates from Erdenet over a period of three years (the "First Catrison Contract"). Ganzorig signed the contract on behalf of Erdenet, and Yoonjung signed on behalf of Catrison. At the time the First Catrison Contract was executed, Catrison had existed for less than a week and did not have any history of trading in copper concentrates. Neither Catrison's sole shareholder, Hak Seon, or its then sole director, Yoonjung, at the time had any prior experience or technical expertise in copper concentrates. It is unclear how Hak Seon, Yoonjung, or Catrison obtained financing to purchase copper concentrates from Erdenet, as there is no indication that either individual then (or now) possessed the personal funds or the creditworthiness to secure such financing.

23. On December 14, 2011, Catrison concluded a second contract with Erdenet that superseded the First Catrison Contract (the "Second Catrison Contract"). Ganzorig, again in his

⁴ Hak Seon was initially Catrison's 100% shareholder, but transferred her shares to BVI company, Beckenham Holdings Limited, on November 1, 2012. Beckenham Holdings is believed to be a corporate nominee used by Hong Kong-based GDL Corporate Services Limited, the agent of Catrison. In addition, Yoonjung was sole director of Catrison between February 2011 and April 2011, and again between January 1, 2012 and October 3, 2018. At all other times, Hak Seon has been sole director of Catrison.

capacity as General Director of Erdenet, signed the contract on behalf of Erdenet, and Yoonjung signed on behalf of Catrison. Under the Second Catrison Contract, Catrison agreed to purchase 240,000 WMT over three years. All other material terms remained the same as the First Catrison Contract. The Second Catrison Contract was amended on May 1, 2012 and again on May 29, 2012.

24. In 2011, Erdenet sold 45,027.25 WMT of copper concentrates to Catrison at a total cost of US\$ 68,974,595.58. In 2012, Erdenet sold an additional 63,831.91 WMT of copper concentrates at a total cost of US\$ 92,935,795.53. Almost immediately after entering into each of these sales contracts, Catrison re-sold some or all of the copper concentrates that it purchased from Erdenet to Ocean Partners UK Limited (“OPUK”), a UK-based commodities trading company. Before and after contracting with Catrison, Erdenet sold copper concentrates directly to OPUK, one of Erdenet’s largest customers. The fact that Erdenet suddenly began awarding contracts to Catrison, a new entity controlled by individuals with no experience in the industry, instead of continuing to sell directly to OPUK, as it had done previously, is both unusual and wholly unexplained. Individuals from OPUK’s affiliate in the United States, Ocean Partners USA, were in direct contact with Catrison and, at times, even handled shipments and communications with Erdenet on behalf of Catrison. In a cryptic email to Erdenet, one individual from Ocean Partners USA stated that the Catrison shipments were “not well discussed,” and ended her email with the words “I don’t wish to cause any problems discussing the “c” shipments.”

b) Erdenet’s Contracts with Cliveden

25. Cliveden is a Swiss company that was established on December 9, 2011 by Mark Forsyth, a commodities trader. Shortly thereafter, on January 26, 2012, a majority of Cliveden’s shares were allocated to Hong Kong entity Ever Global Trading Limited (“Ever Global”), whose

sole owner and director since December 13, 2011 has been Batbold proxy Hak Seon. On January 26, 2012, Hak Seon was appointed as director of Cliveden.

26. Batbold and his family were in contact with the key players at Cliveden. As discussed above, Hak Seon was in communication with both Batbold and Battushig. In addition, Mark Forsyth, using the e-mail address “Clivedenmongolia@gmail.com,” was in communication with Batbold. Batbold again did not use his official parliamentary e-mail address to communicate with Hak Seon and Mark Forsyth, but instead used his personal Yahoo e-mail address.

27. On December 14, 2011, one day after Hak Seon became the sole shareholder of Ever Global, which in turn held 74% of Cliveden, Cliveden was awarded its first contract with Erdenet to purchase 240,000 WMT of copper concentrates over a period of three years (the “First Cliveden Contract”). Ganzorig signed the contract on behalf of Erdenet, and Mark Forsyth signed on behalf of Cliveden. The First Cliveden Contract was signed on the same day, and contained substantially the same terms and quantities, as the amendment to the Second Catrison Contract.

28. Following a dispute over the non-delivery of copper concentrates, Cliveden and Erdenet entered into a second contract on 7 September 2016 (the “Second Cliveden Contract”), pursuant to which Cliveden agreed to buy 86,000 WMT of copper concentrates over a three-year period. Tserevsamba Davaatseren (then General Director of Erdenet) signed the contract on behalf of Erdenet, and Forsyth signed on behalf of Cliveden. Aside from quantity, all material terms were the same as the First Cliveden Contract. The Second Cliveden Contract was later amended three times to reflect changes to the shipping schedule, price mechanism, and treatment and refining charges.

29. Between 2012 and 2019, Erdenet sold 131,517.47 WMT of copper concentrates to Cliveden at a total cost of US\$ 163,611,796 million.

c) Erdenet's Contracts with Genetrade

30. Genetrade is a BVI company that was established on November 19, 2010, and controlled by Batbold proxies, Defendants Cheong and Kang Eun Joo ("Kang"). The signatory for Genetrade is Kang who, like Cheong, is a South Korean citizen, a former employee of Samsung C&T, and a suspected proxy of Batbold.

31. Plaintiffs believe that Genetrade is also controlled by Batbold proxy Cheong. After Genetrade was established, Cheong registered the domain "genetrade.biz" and amended his contact details to include the email address "genetrade@yahoo.com." Cheong has used his Genetrade-related e-mail account to communicate with Batbold. Genetrade also has three different physical addresses in Hong Kong and the BVI that Cheong regularly uses.⁵

32. Shortly after it was incorporated, Genetrade was awarded its first sales contract by Erdenet, on December 24, 2010, for the purchase of 3,300 WMT of molybdenum flotation concentrates. On December 6, 2011, Genetrade obtained a second contract with Erdenet, again signed by Ganzorig and Kang, for the purchase of 3,800 WMT of molybdenum flotation concentrates (collectively, the Genetrade Contracts). Pursuant to the Genetrade Contracts, Erdenet sold 6,967.258 WMT of molybdenum flotation concentrates to Genetrade at a total cost of US\$ 68,428,437.56 million. Plaintiffs believe that Genetrade is used by Batbold, Cheong, and Kang to sell shipments of molybdenum concentrate to Busan and Incheon in South Korea.

⁵ In contracts with Erdenet, Genetrade has used an address in Hong Kong and the BVI, and on SWIFT transfer documents relating to Genetrade, a Hong Kong address is provided.

d) Erdenet's Contracts with Lidex

33. Although Plaintiffs do not at present advance legal claims in the Mongolian court in respect of Lidex, facts relating to the Lidex transactions are included here for context. Lidex was incorporated in Hong Kong on February 23, 2007, around a month after Cheong left his role at Samsung C&T. Although the initial shareholders of Lidex were Hong Kong entities, Cheong appears to have been involved in the company since at least the second quarter of 2007. On April 10, 2007, Cheong registered the domain "lidex.org" and began using email address "lidexholdings@yahoo.com." From November 1, 2009 through September 28, 2010, Cheong was director of Lidex. Subsequently, Cheong was replaced as director by a BVI company, Rowse Holdings Limited ("Rowse"), which also became 100% shareholder of Lidex. Yoonjung was the authorized signatory and representative of Rowse, which remained the 100% shareholder of Lidex until that company's dissolution on October 24, 2014.

34. In early 2007, Lidex concluded a contract with Erdenet for the sale and purchase 20,000 tons of copper concentrates (the "First Lidex Contract"). On 14 November 2008, Erdenet and Lidex signed contract No. E-2008/01-Cu to supply a total of 150,000 tons of copper concentrates (the "Second Lidex Contract"). However, a dispute arose in 2008 and, in 2011, Lidex and Erdenet agreed to "close[]" the contract.

35. Lidex signed another contract with Erdenet in 2011, contract No. E-2011/01-Cu (the "Third Lidex Contract"). However, that agreement was annulled and never implemented. This Erdenet contract matches the Erdenet contract number of the First Catrison Contract, suggesting that Catrison replaced Lidex as the counterparty for the contract. Further, bank statements show that, after obtaining the First Lidex Contract with Erdenet, Lidex made various payments into a joint account held by Cheong and Defendant Nyamdalai Ochirbat ("**Ochirbat**") at the Trade and Development Bank in Mongolia. Lidex made transfers of US\$ 9,980.50 on

March 19, 2008, US\$ 19,980.50 on June 19, 2008, and US\$ 24,980 on March 1, 2010 to Cheong and Ochirbat's joint account.

36. Table 1 below shows the timing of the Erdenet contracts and Defendants known to be involved listed in chronological order.

Table 1

Date	Erdenet Counterparty	Proxy Involved in Transaction
February 23, 2007	Lidex Established	Cheong, Kim Yoonjung
2007 (Exact date unknown)	Lidex (First Lidex Contract)	Cheong, Kim Yoonjung
November 14, 2008	Lidex (Second Lidex Contract)	Cheong, Kim Yoonjung
November 19, 2010	Genetrade Established	Kang Eun Joo, Cheong
December 24, 2010	Genetrade (First Genetrade Contract)	Kang Eun Joo, Cheong
2011 (Exact date unknown)	Lidex (Third Lidex Contract)	Cheong, Kim Yoonjung
February 8, 2011	Catrison Established	Kim Yoonjung, Hak Seon
February 14, 2011	Catrison (First Catrison Contract)	Kim Yoonjung, Hak Seon
April 14, 2011	First Amendment to First Catrison Contract	Kim Yoonjung
December 6, 2011	Genetrade (Second Genetrade Contract)	Kang Eun Joo, Cheong
December 9, 2011	Cliveden Established	Hak Seon
December 14, 2011	Cliveden (First Cliveden Contract)	Hak Seon
December 14, 2011	Catrison (Second Catrison Contract)	Kim Yoonjung, Hak Seon
April 27, 2012	First Amendment to Second Catrison Contract	Kim Yoonjung
April 27, 2012	First Amendment to First Cliveden Contract	
May 29, 2012	Second Amendment to Second Catrison Contract	Kim Yoonjung
September 7, 2016	Cliveden (Second Cliveden Contract)	Hak Seon
October 5, 2016	First Amendment to Second Cliveden Contract	
February 1, 2017	Second Amendment to Second Cliveden Contract	
February 28, 2018	Third Amendment to Second Cliveden Contract	

37. Under Mongolian law, Defendants' actions with respect to the Erdenet Mine Scheme were in violation of the Company Law of Mongolia, dated 2 July 1999 (the "1999

Company Law”), Company Law of Mongolia, dated 6 October 2011 (the “2011 Company Law”), and the Mongolian Civil Code (the “Civil Code”). In particular:

- a. Pursuant to Article 84.1 of the 2011 Company Law and/or Article 81.1 of the 1999 Company Law, Batbold (in his capacity as Prime Minister of Mongolia) and Ganzorig (in his capacity as Director General of Erdenet) were “governing persons” of Erdenet;
- b. On behalf of Erdenet, Batbold and/or Ganzorig concluded contracts that were unfavorable to Erdenet, and knew or should have known that those transactions were unfavorable. By concluding such transactions, Batbold and Ganzorig violated their duties as governing persons to, among other things, act in good faith and in the best interests of the company pursuant to Article 81.2 of the 1999 Company Law and Articles 84.4.2-84.4.6 of the 2011 Company Law;
- c. Batbold and/or Ganzorig concluded contracts on behalf of Erdenet with affiliated parties and used their office as governing persons of Erdenet. Batbold and or Ganzorig’s conduct constitutes a violation of Article 84.4.1 of the 2011 Company Law and Articles 6.3 and 11.1 of the Law on the Regulation of Public and Private Interests and Prevention of Conflict of Interest in Public Service 2012 (the “Conflict of Interest Law”);
- d. Batbold and/or Ganzorig were “conflict of interest” persons and, in transacting with Erdenet (through Catrison, Cliveden, and Genetrade) without following the procedures set forth in the relevant company law, breached the provisions against conflict-of-interest transactions contained in the company law (Articles 86-90 of the 1999 Company Law and Articles 89-93 of the 2011 Company Law);
- e. Batbold and Ganzorig are personally liable for their conduct under Article 82.1.5 of the 1999 Company Law and Article 84.6 of the 2011 Company Law;
- f. Batbold was an accessory to Ganzorig’s wrongdoing under Article 497.3 of the Civil Code because he “urged” and/or “assisted” Ganzorig in the commission of his wrongdoing and/or “benefited” from it;
- g. Batbold’s proxies secured high-value transactions within a very short time after the establishment of Catrison, Cliveden, and Genetrade, and controlled Batbold’s assets. Defendants knew or should have known that Ganzorig and Batbold were taking unlawful actions and are jointly liable under the Article 497.3 of the Civil Code as they “urged” and/or “assisted” Ganzorig and Batbold in causing loss or damage to Erdenet and/or “benefited” from such wrongdoing;

- h. Finally, the contracts between Erdenet and Catrison, Cliveden, and Genetrade discussed above should be invalidated pursuant to Articles 56.1.1, 56.1.8 and 56.1.9 of the Civil Code because they were (i) made in breach of law or contradicted commonly accepted behavioral norms, (ii) made without consent; and (iii) made in breach of the core purpose of Erdenet.

38. Batbold acted together with his proxies to ensure that Erdenet contracted with companies that Batbold effectively controlled. At that time, and in anticipation of being awarded a contract from Erdenet, Batbold's proxies — most of whom had no prior experience or qualifications in the mining industry — established offshore companies and, just days later, secured lucrative contracts for the purchase and re-sale of copper and molybdenum concentrates. Neither Batbold nor his proxies disclosed Batbold's ultimate beneficial ownership of Catrison, Cliveden, or Genetrade, facts and circumstances that would have rendered them ineligible to enter into contracts with Erdenet.

39. The terms of these transactions do not reflect arm's length negotiations. Under Mongolian law, the Individual Defendants are liable to the Plaintiffs for amounts lost by the Mongolian state as a result of these insider transactions.

B. The Oyu Tolgoi Mine Scheme: The Individual Defendants Received Undisclosed Illegal Kickbacks in Exchange for Favors from the Government Relating to the Oyu Tolgoi Mine

40. The Individual Defendants (on behalf of Batbold) also illegally received, and failed to disclose, assets received from offshore and onshore companies in return for favors granted to the private shareholder and operator of the Oyu Tolgoi mine, Canadian mining company Ivanhoe Mines Limited ("Ivanhoe").

41. On October 6, 2009, the Mongolian government entered into an agreement for the construction and operation of the Oyu Tolgoi mine with Ivanhoe and Anglo-Australian mining company Rio Tinto plc ("Rio Tinto") known as the Oyu Tolgoi Investment Agreement. This

agreement gave the Mongolian State-owned entity Erdenes MGL LLC (“MGL”) a 34% interest and Ivanhoe a 66% interest in Ivanhoe Mines Mongolia Inc. LLC (known as Oyu Tolgoi LLC after December 1, 2009), which operated the Oyu Tolgoi mine.⁶

42. On October 29, 2009, three weeks after the Oyu Tolgoi Investment Agreement was signed, Batbold assumed the role of Prime Minister, at which time the Mongolian government’s three appointed Board members of Oyu Tolgoi LLC began reporting to Batbold.

a) May to August 2010 Selection of Oyu Tolgoi LLC Board and Key Site Visit By Batbold to Oyu Tolgoi Project Site

43. On May 5, 2010, the Board of Oyu Tolgoi LLC was selected. Ivanhoe, Rio Tinto, and the Mongolian state-owned entity, MGL, each appointed three directors. MGL’s appointees were announced by the State Property Committee, which reported to Batbold at the time. One MGL-appointed member of the board, Chuluun Ganbold (“Chuluun”), had, and continues to maintain, a social relationship with Batbold’s wife, Otgontuya Khorloo (“Otgontuya”). Chuluun and Otgontuya are members of the Development Committee of the Mongolian Arts Council and have also collaborated on charity and cultural events, suggesting a personal friendship.

44. On August 25 and August 26, 2010, Batbold made a highly-publicized site visit to the Oyu Tolgoi site. Accompanied by members of the cabinet, parliamentarians, and a group of journalists, Batbold was hosted by Ivanhoe, including its founder, Robert Friedland. Batbold also laid the foundation stone of the Oyu Tolgoi-funded Technical and Vocational Education Centre in Dalanzadgad, the capital of Ömnögovi Province. At a press conference, Batbold stated that he was pleased with progress and that the Government should work to ensure that the mine begins production on schedule.

⁶ While Rio Tinto only held a minor, 9.9%, stake in Ivanhoe at the time, Rio Tinto now controls Ivanhoe.

45. Around the time of the Oyu Tolgoi LLC board appointments and Batbold's site visit, offshore companies began taking steps to make payments or transfer interests in offshore entities to four offshore corporate groups controlled by Batbold's proxies, including Cheong, in the BVI and Hong Kong.

b) December 2010 Negotiations

46. In or around December 2010, the Mongolian government entered into key negotiations with the investors of the Oyu Tolgoi mining project, Ivanhoe, and Rio Tinto, regarding the ownership and management of Oyu Tolgoi LLC. The then Minister of Finance (Sangajav Bayartsogt) and then Minister of Mineral Resources and Energy (Zorigt Dashdorj) participated on behalf of the Government of Mongolia. However, as reflected in his statements to the public in a December 2010 press conference, Batbold directly managed the negotiations on behalf of the Mongolian government and was closely involved in discussions regarding the key terms of the agreement.

47. As a result of these negotiations, Rio Tinto secured a substantial increase in its ownership in Ivanhoe from 34.8% to 42.3%, as well as a right to increase its stake to a 49% share — the “maximum ownership” possible at that point in time, and assumed full authority over the remaining construction, mining, production, and management of the project. Around the time of the negotiations, Ivanhoe-linked individuals and entities transferred assets to Batbold proxies, primarily through a BVI company, Bophut Investments Limited, an entity believed to be under the control of Batbold through proxies Cheong and Andrew John Mooney (“Mooney”).⁷ Mooney is an individual affiliated with Ivanhoe who is believed to have facilitated payments and

⁷ Cheong and Mooney were the initial shareholders of Bophut Investments Limited. Jadepeace Group Limited, a BVI company whose authorised signatory is the Ivanhoe-linked account, Andrew Burgin, was at the time the sole member of Bophut. It is likely that Jadepeace was a corporate nominee and Cheong and Mooney may have still held an interest in Bophut at the time.

asset transfers to Batbold's proxies in exchange for Batbold's assistance on the Oyu Tolgoi project.

48. On December 8, 2010, Ivanhoe, Rio Tinto, and the Mongolian government reached an agreement to provide accelerated funding for Oyu Tolgoi and for Rio Tinto to assume direct management of the project. Shortly before and after the negotiations, Ivanhoe-linked individuals made several transfers of assets to entities controlled by Batbold and his proxies. These transfers included the transfer of the right to acquire a multi-million dollar copper-gold project, as well as control of a wholly owned Singapore subsidiary, CBM Mongolia Pte Ltd ("CBM Mongolia") by Ivanhoe to Bophut Investments Limited. Upon the transfer of CBM Mongolia to Bophut Investments, Ivanhoe's Vice President and Corporate Secretary, Beverly Ann Bartlett, resigned as the Director of CBM Mongolia and Batbold proxies Cheong and Mooney were appointed in her place.

c) June 2011 Negotiations

49. In early June 2011, Ivanhoe and Rio Tinto were negotiating the financing and ownership structure of the Oyu Tolgoi project with the Mongolian government. As a result of the negotiations, the parties executed an Amended and Restated Shareholders' Agreement, which granted Rio Tinto several favorable terms, including, *inter alia*, a reduced interest rate on its repayment of the Mongolian government's share of the initial capital costs of the project, as well as a substantial reduction in its Mongolian tax obligations. Around this time, Ivanhoe-linked individuals made payments to entities controlled by Batbold's proxies, including Cheong.

50. Batbold's actions in connection with the Oyu Tolgoi Mine Scheme violated the 1999 Company Law, 2011 Company Law, and the Civil Code. In particular:

- a. Pursuant to Article 84.1 of the 2011 Company Law, Batbold was a "governing person" of EOT because he was a "person who participate[d] directly or indirectly in the process of making official decisions of a

company or concluding transactions or agreements.” As Prime Minister, Batbold had full authority over state property policy;

- b. On behalf of Batbold, Batbold’s proxies concluded transactions with Ivanhoe-related proxies in which they accepted various benefits for Batbold’s ultimate benefit in violation of Batbold’s duties as a “governing person” to, *inter alia*, act in good faith and in the best interests of the company (Articles 84.4.2-84.4.6 of the 2011 Company Law);
- c. Batbold is personally liable for his unlawful conduct under Article 84.6 of the 2011 Company Law;
- d. The transactions pursuant to which Batbold’s proxies accepted benefits from Ivanhoe-related proxies should be invalidated pursuant to Article 56.1.1 of the Civil Code because they were made in breach of law or contradicted commonly accepted behavioral norms;
- e. Batbold’s proxies secured lucrative investment opportunities, substantial payments, shares and board positions in companies, and knew or should have known that Batbold was taking unlawful actions. Defendants are therefore jointly liable under the Article 497.3 of the Civil Code as they “urged” and/or “assisted” Batbold in causing loss or damage to EOT and/or “benefited” from such wrongdoing.

III. Proceedings Before the Mongolian Court

51. On October 14, 2020, Plaintiffs, represented by the Metropolitan Prosecutor’s Office, filed a claim before the Bayanzurkh District Civil Court of First Instance in Mongolia (the “Mongolian Court”) against Individual Defendants and others to recover assets illegally diverted by Defendants. True and correct copies of Plaintiffs’ complaint and exhibits thereto filed in the Mongolian Court (the “Mongolian Complaint”), as well as a certified English translation of the Mongolian Complaint, are attached hereto as **Exhibit A**. On October 28, 2020, the Mongolian Court issued a judicial decree initiating a civil case based on the Mongolian Complaint. True and correct copies of the Judicial Decree and a certified English translation of the same are attached hereto as **Exhibits B and C**, respectively. Batbold was served with the Mongolian Complaint and supporting papers on November 3, 2020.

52. In the Mongolian Complaint, Plaintiffs sought, among other forms of relief, disgorgement of all gains, revenue, and profits that the Individual Defendants have accrued through their wrongdoing. As set forth in the Mongolian Complaint:

- a. The Individual Defendants' execution of contracts on behalf of Erdenet with Catrison, Cliveden, and Genetrade violate Article 81.2, 82.1.5, and 86-90 of the 1999 Company Law and Articles 84.4.2-84.4.6, 84.6, and 89-93 of the 2011 Company Law (read with Article 497.3 of the Civil Code);
- b. The Individual Defendants' execution of transactions with Ivanhoe-related individuals and entities in connection with the Oyu Tolgoi project are contrary to Articles 84.4.1-84.4.6, 89.1, and 89-93 of the 2011 Company Law, as well as Article 56.1 of the Civil Code;
- c. The Individual Defendants are liable to the Claimants for all gains, revenues, and profits that have accrued through or as a result of their wrongdoing (pursuant to Articles 492 and 493 of the Civil Code of Mongolia);
- d. Alternatively, the Individual Defendants must account to the Claimants for all "monetary profits realized" in respect of their breach of the conflict-of-interest provisions pursuant to Article 90.1 of the 1999 Company Law and Articles 93.1 and 93.2 of the 2011 Company Law;
- e. The Individual Defendants are liable for the Claimants' losses pursuant to Articles 228.1, 497.1 and 510.1 of the Civil Code;
- f. Erdenet's claims against Catrison, Cliveden, and Genetrade are not arbitrable and/or not within the scope of the arbitration clause contained in the Erdenet Contracts. Under Article 189.2.4 of the Mongolian Civil Procedural Law, the Mongolian Court has special jurisdiction over this type of dispute including because it involves tort claims and because it is an international civil law dispute where the damage has occurred to a person in the territory of Mongolia.

53. Plaintiffs have engaged Maizorig Janchivdorj, a senior Mongolian lawyer at Mongolian law firm MDS&KhanLex, to provide a Mongolian law opinion that explains and addresses the likelihood of success on the merits of Plaintiff's Mongolian law claims. A true and correct copy of the Memorandum of Mongolian Law prepared by Mr. Janchivdorj, dated October

14, 2020, is attached as **Exhibit D**. According to Maizorig Janchivdorj, Plaintiffs have strong grounds for each of their Mongolian law claims set forth in the Mongolian Complaint.

IV. The London Court Judgment

54. On November 17, 2020, Plaintiffs filed an *ex parte* application in the High Court of Justice, Queen's Bench Division, Commercial Court (the "London Court") for a domestic freezing injunction against Batbold, Cheong, and Lorsch Limited, seeking to enjoin up to £15,235,500 (approximately USD 20 million) in support of the Mongolian Proceedings. The London Court convened an *ex parte* hearing the next day and, after hearing submissions from Plaintiffs' Queen's Counsel, His Honour Judge Pelling QC granted the Plaintiffs' application. True and correct copies of the: (i) Freezing Order, (ii) Service Out Order, and (iii) Judgment, and (iv) unofficial transcript of the November 18, 2020 *ex parte* hearing are attached hereto as **Exhibits E, F, G, and H**, respectively.

55. On the strength of the evidence submitted, the London Court made the following findings and rulings:

- a. The London Court found sufficient evidence to establish that "Mr Cheong and Ms Kim are, as Mr Kroll puts it, proxies for Mr Batbold in the sense that the evidence demonstrates that assets are placed in the name of in particular Mr Cheong in circumstances where there is no evidence that he has ever used those assets and very strong evidence that Mr Batbold and those in his immediate family have used them extensively over the years." Ex. G ¶ 6.
- b. The London Court further found that Plaintiffs had demonstrated a "good arguable case" on their Mongolian claims against Defendants with respect to the Erdenet and Oyu Tolgoi mine schemes. *Id.* ¶ 6-7.
- c. Regarding various properties located in Hong Kong and Phuket, and most notably, the properties subject to Plaintiffs' attachment motion in New York, the London Court noted that although Mr. Cheong or Ms. Kim were the purported beneficiaries, the evidence showed that neither "at any stage made any use of any of these properties," and neither had "visible means of support . . . of acquiring such properties." *Id.* ¶ 11. The court therefore

found that the properties “are properties which it can be inferred were acquired by the principal defendant to the proceedings [Batbold].” *Id.*

- d. Finally, the London Court found that absent an injunction, there was a risk of dissipation for two reasons.
- First, the court noted Batbold’s failure to disclose his assets in accordance with Mongolian law which “suggest[ed] a dishonest concealment of assets in which he is beneficially interested.” *Id.* ¶ 13. The court added that Batbold’s failure to disclose ownership of valuable properties in various jurisdictions “suggests a propensity to disguise from which a risk of dissipation can be inferred.” *Id.*
 - Second, the court found that “the evidence shows a sophisticated and systematic approach to the holding of assets in offshore entities controlled by ciphers acting on behalf of [Batbold] in these proceedings.” *Id.* ¶ 14. The court observed that, with respect to the property at issue in London, the evidence showed “how the properties were moved seamlessly from one BVI company to another and with Mr Cheong signing documentation as if he were the ostensible controller of the BVI entities concerned but in circumstances where because he has no visible means of support it is improbable that he could be beneficially interested in the underlying asset or the company which holds the legal title to them.” *Id.*

56. Based on these findings, the London Court issued the Freezing Order enjoining Batbold, Cheong, and Lorsch Limited from disposing of assets located in the UK up to the value of £15,235,500, and further enjoining them from disposing of the shares of Lorsch Limited, which are located in the BVI. Ex. E at 3. The London Court further ordered discovery into the bank accounts and assets of Batbold, Cheong, and Lorsch Limited. *Id.* at 4.

V. The Hong Kong Court Order

57. In Hong Kong, Plaintiffs sought a domestic freezing injunction, disclosure of information and a gagging order against three individuals (Batbold, Cheong and Kim), six Hong Kong companies (Catrison Limited, Midlink International Limited, Ever Global Trading Limited, Capital World Development Limited, Gateview Development Limited and Klaford Services Limited), and three BVI companies (Lovitas Limited, Infinite Properties Limited and

Genetrade Limited). After a hearing on Wednesday November 11, 2020, before the High Court of the Hong Kong Special Administrative Region, Court of First Instance (the “Hong Kong Court”), the Hong Kong Court adjourned the application *sine die* in order to give Plaintiffs an opportunity to provide further information about certain matters identified by the Hong Kong judge. Given the adjournment, no formal order was given at the hearing.

58. On November 23, 2020, Plaintiffs submitted renewed their *ex parte* application before the Hong Kong Court. That same day, counsel for Plaintiffs appeared before the Hong Kong Court. On the strength of the evidence, the Hong Kong Court granted an *ex parte* injunction against the above-mentioned individuals and entities, enjoining them from disposing of assets located in Hong Kong up to the value of USD 30 million, including but not limited to two valuable properties in Hong Kong. A true and correct copy of the Hong Kong Court’s November 23, 2020 injunction order, which was approved by the Hong Kong Court and will shortly be sealed, is attached hereto as **Exhibit I**.

VI. The Individual Defendants’ Efforts to Conceal Illegally Diverted Assets

59. Upon information and belief, Batbold and the other Individual Defendants have established a complex network of offshore holding companies and nominee directors in more than 10 different jurisdictions, and acquired interests in approximately 100 entities and numerous properties and bank accounts in those jurisdictions, to hide the proceeds of Batbold’s ill-gotten gains and to shield such proceeds from recovery by the Mongolian government.

A. Cheong, Hak Seon, Rhee Byung Wook, Are Proxies of Batbold

60. Cheong is a South Korean citizen with recent addresses in both Mongolia and Hong Kong, but who is understood currently to be residing in Hong Kong. In 1987, Cheong began working for the Samsung C&T Corporation (“Samsung”) in Seoul. In August 1995, Cheong moved to Mongolia to work on a copper joint venture between Samsung and Erdenet,

Erdsam, where he managed Samsung's element of the joint venture. The President of the Samsung Corporation himself appointed Cheong to the joint venture, and stated at the time that Cheong would "represent all of [Samsung's] concerns with regard to business activities in Mongolia." Ex 66. In 2007, Cheong resigned from Samsung as a senior manager, and began working as a proxy for Batbold.

61. Despite his apparently modest personal means, Cheong has acted as a director, shareholder, and has held other significant roles in at least 60 companies in eight jurisdictions that own substantial real estate and other assets. Cheong has facilitated the diversion and holding of funds and other benefits that belong to the Plaintiffs.

62. Cheong has numerous connections to Batbold, including, *inter alia*:

- a. acting as signatory for the transfer of two properties in London in which Batbold's family are known to have resided;
- b. acting as director (and former shareholder) of Midlink, a company with clear connections to Batbold's family;
- c. registering the internet domain, "chinggiskhaan.org," on behalf of Hotel Chinggis Khaan, which is owned by Batbold;
- d. serving as President, Treasurer, Secretary and Director of a company that owned a property in Boston that Batbold's children lived in between 2012 and 2014;
- e. serving as Director of companies affiliated with Batbold's family members, including Batbold's sons, brother, nephew, brother-in-law, and ex-wife; and
- f. attending Battushig's wedding reception (which comprised only of around fifty guests).

63. Cheong is also linked to several bank accounts, companies, and other assets that suggest he is actively involved in holding assets on Batbold's behalf. He has acted as: director of companies in Hong Kong, Singapore, and Massachusetts; shareholder of companies in the BVI, Hong Kong, and Singapore connected to Batbold; and authorized signatory of, point of contact

for, or otherwise connected to companies in the BVI, Canada, and Hong Kong connected to Batbold. Cheong owns, controls, and/or has material interests in bank accounts in several jurisdictions and owns, controls, and/or has material interests in properties in New York, London and Hong Kong (along with a property in Boston that has since been sold), which are together valued at upwards of US\$ 31 million. The US and UK properties are believed to have been used by Batbold and his family members.⁸

64. Hak Seon, Cheong's wife, is also a South Korean citizen currently living in Hong Kong. Hak Seon has a doctorate in ancient and medieval languages, and since 2001, has been a linguistics professor, publishing articles on the Mongolian and Japanese languages. Hak Seon is also linked to Batbold, including by acting as a director for companies whose purpose is to hold assets obtained through illegal means, and serving as a link between Batbold's illegitimate and legitimate assets. Hak Seon is believed to have been operating as a Batbold proxy since at least 2011. By 2011, Kim had been appointed as a director and/or had become a shareholder in major companies notwithstanding the fact that she appeared to have neither the requisite experience nor the background to perform such roles. Despite her modest means, and the absence of any current occupation, she is linked to at least 25 companies in eight jurisdictions — and likely many more — whether as shareholder, director, signatory or representative. In such roles, Hak Seon owns, controls, and/or has material interests in (or did so at one point in time) bank accounts in multiple

⁸ According to US credit header reports, Battushig is connected to the New York property, and Batbold's daughter, Badamkhand, and Battushig were connected to the Boston property. According to UK credit header reports, Batbold's wife, Otgontuya, his sons, Battushig and Samadi, his sister-in-law, Sarantuya Khorloo, and her daughter, Lucy Ganbold, are connected to two of the central London properties. In addition, the timing of the purchases of Unit 58D in November 2012 and Unit 12E in March 2015 should be seen in the context of: (i) Battushig's enrollment in an MBA program at Harvard University in 2012, and Battushig's employment at The Blackstone Group in 2014; (ii) Batbold's daughter Badamkhan's enrollment at Boston University in 2012 or 2013, and at New York University in 2017; and (iii) Batbold's daughter Tserendulam's enrollment at New York University in 2017.

jurisdictions and properties in Boston, Hong Kong and Thailand, which are together valued at upwards of US\$ 14 million.

65. Rhee Byung Wook (“Rhee”) is a South Korean citizen currently living in Hong Kong. Rhee works for Hong Kong company Minipa (HK) Limited, which was founded in 1988, and is a wholesale distributor of electronic parts. Since September 16, 1988, Minipa (HK) Limited has been the registered owner of Unit N, 11/F, Summit Building, 30 Man Yue Street, Hung Hom, Kowloon, Hong Kong. This address has been the registered address for several companies, including Lovitas Limited, a BVI company connected to suspected Batbold proxies, Cheong, Hak Seon, and Yoonjung. As a result, Plaintiffs believe that Rhee acts as a significant administrator of Batbold-related companies. Cheong and Hak Seon have also used the address of an apartment owned by Rhee’s wife for correspondence, further supporting Rhee’s role as a proxy for Batbold.⁹

B. The Properties Are Beneficially Owned By Batbold

66. Among the illegally-obtained assets concealed within this network and hidden from the Mongolian government are the Properties, *i.e.*, Unit 12E, 21 East 61st Street, New York, NY 10065, and Unit 58D, 230 West 56th Street, New York, NY 10019. Upon information and belief, the New York corporations Lovitas Inc. and Baloas Inc., which directly own each of the Properties, are in turn held respectively by Lovitas Limited and Baloas Limited, two BVI entities established on May 9, 2012 and controlled by Batbold’s proxies. Lovitas Limited is controlled by Hak Seon and Rhee Byung Wook, and the officers of Baloas Limited are currently unknown. Lovitas Inc. and Baloas Inc., were both established in New York on May 14, 2012, five days after entities with the same names were formed simultaneously in the BVI.

⁹ Flat 4B, 1/F., Hong Yuen Court, No 1-5 Tak Shing Street, Kowloon, Hong Kong.

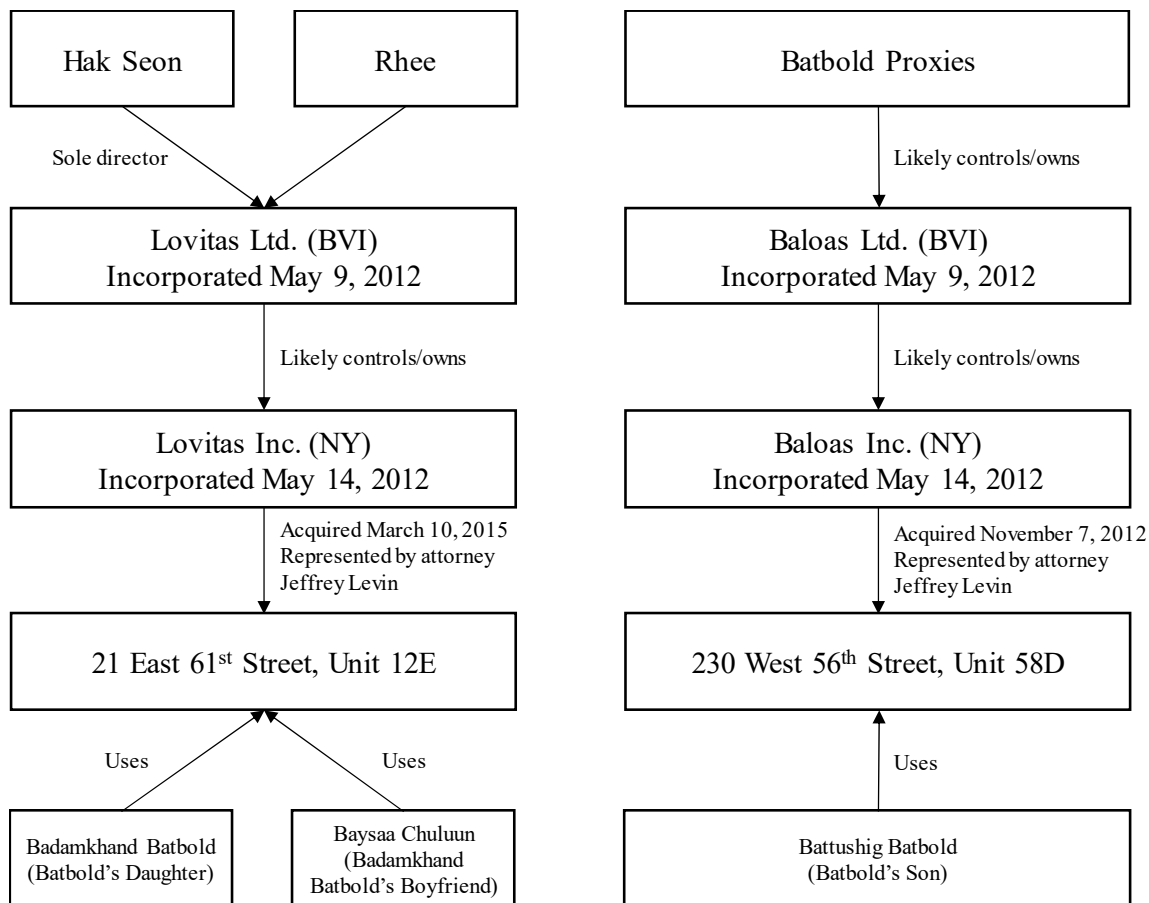
67. Public property records show that both property purchases by Lovitas Inc. and Baloas Inc. were facilitated by the same attorney, Jeffrey Levin, who is affiliated with the law firm Squire Sanders LLP.

68. The first property, Unit 12E, 21 East 61st Street, New York, NY 10065 (“Unit 12E”), was acquired by Lovitas Inc. on March 10, 2015 for US\$ 10,083,925 with no mortgage. As stated above, Lovitas Inc. was incorporated five days after Lovitas Limited (BVI), of which Hak Seon is the sole director. Lovitas Limited is also the registered owner of a property in Hong Kong, for which it obtained a mortgage on 26 June 2020 with Hak Seon listed as the “borrower.” In 2015 and 2016, U.S. credit header records also linked Cheong to Unit 12E. Social media evidence further shows Batbold’s daughter, Badamkhand, and her boyfriend, Baysaa Chuluun, visiting Unit 12E in April 2016. Plaintiffs believe that Lovitas Limited is controlled by Batbold’s proxies and is a holding company for Lovitas Inc., enabling Batbold to control Lovitas, Inc. and therefore Unit 12E.

69. The second property, Unit 58D, 230 West 56th Street, New York, NY 10019 (“Unit 58D”), was acquired by Baloas Inc. on November 7, 2012 for US\$ 3.9 million with no mortgage. U.S. credit header records have linked Batbold’s son, Battushig, to this address since May 2015. Although Hak Seon’s name does not appear on the ownership documents, in light of (i) the use of nominee agents and addresses, (ii) the timing of the incorporation of Baloas Inc. in New York, and Baloas Limited in the BVI, (iii) the fact that the “Baloas” entities were set up ostensibly for the same purpose as Lovitas Inc. and Lovitas Limited (*i.e.*, to hold property used by Batbold’s children in New York), and (iv) the use of the same lawyer to facilitate both property purchases, there are strong indications that Batbold proxies likely control Unit 58D as well.

70. Figure 1 below illustrates the connections between the Individual Defendants, Entity Defendants and the Properties.

Figure 1



71. Although the Properties are not listed in Batbold's name, but rather are held in the name of his proxies, it is extremely unlikely that his proxies acquired them independently or legitimately. As discussed above, there is no indication that any of Batbold's proxies independently own or operate successful businesses, or have other means of purchasing the assets that they allegedly hold. It remains unclear why Hak Seon, a linguistics academic, or her husband, Cheong, a former Samsung employee with a modest salary, might have the means or need to purchase expensive properties in cities with which they have no personal connection,

particularly using offshore entities to do so, and which properties are used by members of Batbold's immediate family.

72. Rather than holding these Properties directly, the Individual Defendants have structured their ownership such that the Properties are held by offshore entities, the shares of which are held by the Individual Defendants, and which the Plaintiffs believe are ultimately to be controlled by Batbold. As a result, Batbold's ownership interests in the Properties are extremely liquid assets that can be transferred to the control of individuals or entities outside the jurisdiction at any time.

C. The New York Bank Account Is Beneficially Owned By Batbold

73. Plaintiffs also believe that the New York Bank Account, which is affiliated with a Batbold-connected entity, Glowassets Limited, and its subsidiary Glowassets LLC, is beneficially owned by Batbold and/or his proxies. Glowassets Limited and its subsidiary, Glowassets LLC, have several known connections to Batbold and his proxies. In particular: (i) Kuemjong Yu, a friend of Cheong,¹⁰ is believed to be the authorized signatory (*i.e.*, the authorized representative), of the Mongolian subsidiary of Glowassets Limited, Glowassets LLC; (ii) the sole director of Glowassets LLC since its incorporation is another Batbold proxy named Mongolmaa Jambaldorj; (iii) Glowassets Limited's correspondence address in Mongolian banking records was the address of a corporate service provider used by Cheong, Hak Seon, Yoonjung, and other proxies to administer properties;¹¹ (iv) Glowassets Limited's correspondence address listed in some banking records is a Hong Kong address indirectly owned

¹⁰ Kuemjong is one of fourteen Facebook friends of Cheong, who uses the pseudonym 'Nicholas Kolbe' on Facebook.

¹¹ Suite 1, 8th Floor, New Henry House, 10 (Ice House Street, Central, Hong Kong). This is the address of GDL Corporate Services Limited.

by Rhee;¹² and (v) Glowassets LLC owns a 30% stake in Selengeminerals LLC, along with fellow shareholders, Batbold's brother, sister, and brother-in-law.

74. Plaintiffs further believe that Glowassets Limited made three payments totaling US\$ 451,979 to its subsidiary, Glowassets LLC, between September 13, 2012 and February 12, 2016. Glowassets LLC has also received US\$ 300,000 from an unknown source.

75. Plaintiffs have good reason to believe that Glowassets Limited has a US\$ bank account with HSBC in New York. This is because the reference for a US\$ 201,933 payment to Glowassets LLC on February 12, 2016 contains the notation: "HSBC Bank USA, N.A., New York."

76. Further, according to the second amendment to the Second Catrison Contract, JP Morgan Chase NA, 1 Chase Manhattan Plaza, New York, NY 10081, was used as an intermediary bank for payments made by Erdenet Mining Corporation LLC to Catrison Limited.

77. Plaintiffs face irreparable injury if their claim is not secured, as the Individual Defendants have demonstrated that they are determined to avoid the jurisdiction of the courts of Mongolia and to frustrate any recovery of the sums stolen from the Mongolian state.

**FIRST CAUSE OF ACTION
ATTACHMENT IN AID OF MONGOLIAN PROCEEDINGS
(All Defendants)**

78. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 77 as if set forth fully herein.

79. This Court has the authority to assert jurisdiction over the Properties, the shares of New York companies Lovitas Inc. and Baloas Inc., and the New York Bank Account, and to attach these assets as security in aid of the Mongolian Proceedings.

¹² Unit N, 11/F, The Summit Building in Hong Kong.

80. Plaintiffs demand a money judgment against the Individual Defendants in the Mongolian Proceedings.

81. The Individual Defendants are each non-domiciliaries of New York, and each is domiciled in Mongolia, Hong Kong, or South Korea. None of the Individual Defendants is registered or authorized to do business in New York.

82. The Individual Defendants, with intent to defraud the Plaintiffs and/or conceal the assets illegally diverted from the Plaintiffs through their fraudulent transactions from the Mongolian authorities and Mongolian courts, hid the ownership of the Properties and the New York Bank Account within a network of on-shore and off-shore entities controlled by themselves.

83. Plaintiffs have asserted several causes of action against the Individual Defendants in the Mongolian Proceedings, and are likely to succeed on the merits in the Mongolian Proceedings.

84. The amount demanded by the Plaintiffs exceed all counterclaims known to the Plaintiffs. Plaintiffs are not aware of any such counterclaims that have or could be brought against it in this proceeding or in the Mongolian Proceedings.

**SECOND CAUSE OF ACTION
CONVERSION
(All Defendants)**

85. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 77 as if set forth fully herein.

86. Plaintiffs have a possessory right or interest in the payments illegally diverted by the Defendants from the Plaintiffs, which Defendants used to execute the cash purchases of the Properties, as well as funds illegally diverted into the New York Bank Account.

87. Defendants intentionally, deliberately, and without authority assumed or exercised control over the Plaintiffs' assets, and used them to make cash purchases of the Properties and diverted them into the New York Bank Account.

88. Defendants were unjustly enriched and benefited by their conversion of the Plaintiffs' assets.

89. Defendants deliberately prevented the Plaintiffs from pursuing this action by making misrepresentations, on which the Plaintiffs relied, regarding the illegal transactions used to divert assets from the Plaintiffs, and concealing those assets in a complex network of offshore and onshore entities and proxies in over 10 jurisdictions, including New York.

90. Batbold, in his role as Prime Minister of Mongolia, oversaw the State Property Committee, which at the time of Batbold's tenure was the majority owner of Erdenet, before the Plaintiffs assumed full ownership of Erdenet in 2018. In this capacity, Batbold owed a fiduciary duty to the Plaintiffs, which he breached by concealing his actions and the actions of the other Defendants in covering up the abuse.

91. Plaintiffs believe that the Defendants deliberately structured the ownership of the Properties, using several layers of entities and proxies, in order to shield Defendants' ill-gotten gains from discovery by the Mongolian authorities.

92. By virtue of the foregoing acts, conduct, and omissions, on the part of Defendants constituting an unlawful conversion, Defendants have been unjustly enriched and have caused the Plaintiffs to suffer damages in the amount of at least the purchase price of the Properties of approximately US\$ 14 million as well as any amounts in the New York Bank Account.

**THIRD CAUSE OF ACTION
AIDING AND ABETTING CONVERSION**

(Ganzorig Chimiddorj, Tuul Ulambayar, Nyamdalai Ochirbat, Cheong Choo Young, Kim Hak Seon, Kim Yoonjung, Lee Yu Jeong, Rhee Byung Wook, Kang Eun Joo, Battushig Batbold, Baloas Inc., Baloas Limited, Lovitas, Inc., Lovitas Limited, Glowassets Limited)

93. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 77 as if set forth fully herein.

94. As set forth in paragraphs 85 through 92 above, Plaintiffs have alleged an underlying conversion by Defendant Batbold, who may be considered a primary tortfeasor.

95. Each of the Defendants besides Batbold provided substantial assistance to Batbold's conversion by forming and controlling shell entities for the purpose of enabling Batbold to secrete assets rightfully belonging to the Mongolian State and holding such assets on Batbold's behalf.

96. Each of the Defendants besides Batbold had actual knowledge that the property converted by Batbold had been obtained illegally, as evidenced by the elaborate global network of shell entities and proxies in which they participated for the purpose of secreting the converted property. This network was designed and utilized by the Defendants to disguise both the illegal origins and true ownership of the converted property.

**FOURTH CAUSE OF ACTION
DECLARATORY JUDGMENT
(All Defendants)**

97. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 77 as if set forth fully herein.

98. Plaintiffs are entitled to a declaratory judgment pursuant to CPLR 3001 that: (i) the Properties and shares of New York companies Lovitas Inc. and Baloas Inc. are the proceeds of illegality and fraud committed by Defendants against the Plaintiffs; (ii) Plaintiffs are the rightful owners of the Properties and the shares of New York companies Lovitas Inc. and Baloas

Inc., which hold the Properties; (iii) Lovitas Inc., Lovitas Limited, Baloas Inc. and Baloas Limited are alter egos of the Individual Defendants that control those entities, including, but not limited to Batbold, Cheong, Hak Seon, and Rhee; and (iv) Plaintiffs are the rightful owners of the New York Bank Account.

99. An actual and justiciable controversy exists between the parties concerning the relative rights of the parties with respect to the Properties, shares of the New York companies Lovitas Inc. and Baloas Inc., and the New York Bank Account. This controversy is ripe and of sufficient immediacy to justify the issuance of a declaratory judgment.

WHEREFORE, Plaintiffs respectfully request that the Court:

- (a) enter an order of attachment pursuant to CPLR 6212 permitting attachment of, among any other property the Defendants may maintain in New York, the Properties and the corporate shares of Lovitas Inc. and Baloas Inc., which hold the Properties; and/or
- (b) enter judgment (i) declaring Defendants' actions in diverting assets owned by the Plaintiffs to make payments for the Properties and into the New York Bank Account to be an unlawful conversion, and (ii) requiring Defendants to pay restitution and/or damages in an amount to be determined at trial; and/or
- (c) enter judgment declaring the Properties, shares of New York companies Lovitas Inc. and Baloas Inc., and the New York Bank Account to be proceeds of illegality and fraud committed against the Plaintiffs; and
- (d) award such other and further relief to the Plaintiffs as it deems proper.

Dated: New York, New York
November 23, 2020

Respectfully submitted,



James E. Berger
Charlene C. Sun
Joshua S. Wan

KING & SPALDING LLP
1185 Avenue of the Americas
New York, NY 10036
Tel: (212) 556-2100
Fax: (212) 556-2222
jberger@kslaw.com
csun@kslaw.com
jwan@kslaw.com

*Attorneys for Plaintiffs Agency for Policy
Coordination on State Property, Erdenet
Mining Corporation, Erdenes Oyu Tolgoi
LLC*