

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRICK GOLD CORPORATION,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, IN AND FOR THE  
COUNTY OF CLARK; AND THE  
HONORABLE ELIZABETH  
GONZALEZ, DISTRICT JUDGE,  
DEPT. XI,

Respondent,

and

BULLION MONARCH  
MINING, INC.,

Real Party in Interest.

Case No.

Electronically Filed  
Jan 25 2021 09:40 a.m.

Elizabeth A. Brown  
Clerk of Supreme Court

**APPENDIX IN SUPPORT OF  
PETITIONER BARRICK GOLD  
CORPORATION'S PETITION  
FOR WRIT OF PROHIBITION**

**VOLUME II OF VI**

DATED this 22nd day of January, 2021.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice

James J. Pisanelli, Esq., Bar No. 4027

Todd L. Bice, Esq., Bar No. 4534

Debra L. Spinelli, Esq., Bar No. 9695

Dustun H. Holmes, Esq., Bar No. 12776

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

*Attorneys for Petitioner Barrick Gold Corporation*

## CHRONOLOGICAL INDEX

DOCUMENT	DATE	VOL.	PAGE
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Minute Order on All Pending Motions	04/22/2019	I	PA00042-00044
Barrick Gold Corporation's Motion to Dismiss	10/11/2019	I	PA00045-00128
Bullion Monarch Mining, Inc. Motion for Leave to File Amended Complaint <b>FILED UNDER SEAL</b>	11/02/2019	I	PA00129-00185
Bullion Monarch Mining, Inc.'s Opposition to Motion to Dismiss <b>FILED UNDER SEAL</b>	11/12/2019	I, II	PA00186-00329
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Order Granting Plaintiff's Motion for Leave to File Amended Complaint	05/21/2020	II	PA00336-00338
Order Regarding Motion for Clarification or, Alternatively, for Leave to File Amended Complaint	07/14/2020	II	PA00339-00343
Second Amended Complaint <b>FILED UNDER SEAL</b>	07/14/2020	II	PA00344-00390
Barrick Gold Corporation's Motion to Dismiss Plaintiff's Second Amended Complaint	07/28/2020	II	PA00391-00414
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DOCUMENT	DATE	VOL.	PAGE
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Reply in Support of Barrick Gold Corporation's Motion to Dismiss Plaintiff's Second Amended Complaint	09/08/2020	VI	PA01149-01173
Transcript of Proceedings	09/22/2020	VI	PA01174-01249
Notice of Entry of Order Regarding Motions to Dismiss and Motion for a More Definite Statement	12/09/2020	VI	PA01250-01259

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DOCUMENT	DATE	VOL.	PAGE
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Appendix to Barrick Nevada Holding LLC's Motion to Dismiss Plaintiff's Second Amended Complaint <b>EXHIBIT D FILED UNDER SEAL</b>	08/06/2020	III, IV, V	PA00573-01042
Barrick Gold Corporation's Motion to Dismiss	10/11/2019	I	PA00045-00128
Barrick Gold Corporation's Motion to Dismiss Plaintiff's Second Amended Complaint	07/28/2020	II	PA00391-00414

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Bullion Monarch Mining, Inc.'s Opposition to Motion to Dismiss <b>FILED UNDER SEAL</b>	11/12/2019	I, II	PA00186-00329
Combined Opposition to Barrick Gold Corporation's and Barrick Nevada Holding, LLC's Motion to Dismiss Plaintiff's Second Amended Complaint	08/21/2020	V, VI	PA01043-01148
Complaint filed in <i>Bullion Monarch Mining, Inc. v. Barrick Goldstrike Mines, Inc., et al.</i> , Case No. A-18-785913-B, <b>FILED UNDER SEAL</b>	12/12/2018	I	PA00001-00041
Minute Order on All Pending Motions	04/22/2019	I	PA00042-00044
Notice of Entry of Order Regarding Motions to Dismiss and Motion for a More Definite Statement	12/09/2020	VI	PA01250-01259
Order Granting Plaintiff's Motion for Leave to File Amended Complaint	05/21/2020	II	PA00336-00338
Order Regarding Motion for Clarification or, Alternatively, for Leave to File Amended Complaint	07/14/2020	II	PA00339-00343
Proof of Service on Defendant Barrick Gold Corporation	11/25/2019	II	PA00330-00335
Reply in Support of Barrick Gold Corporation's Motion to Dismiss Plaintiff's Second Amended Complaint	09/08/2020	VI	PA01149-01173
Second Amended Complaint <b>FILED UNDER SEAL</b>	07/14/2020	II	PA00344-00390
Transcript of Proceedings	09/22/2020	VI	PA01174-01249

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 22nd day of January, 2021, I electronically filed and served via United States Mail, postage prepaid, a true and correct copy of the above and foregoing **APPENDIX TO BARRICK GOLD CORPORATION'S PETITION FOR WRIT OF PROHIBITION** properly addressed to the following:

**SERVED VIA U.S. MAIL**

Clayton P. Brust, Esq.  
ROBISON, SHARP, SULLIVAN & BRUST, P.C.  
71 Washington Street  
Reno, NV 89503

Daniel F. Polsenberg, Esq.  
Joel D. Henriod, Esq.  
Abraham G. Smith, Esq.  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169

The Honorable Elizabeth Gonzalez  
Eighth Judicial District court, Dept. XI  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155

/s/ Kimberly Peets  
An employee of PISANELLI BICE PLLC

**APPENDIX IN SUPPORT  
OF PETITIONER  
BARRICK GOLD  
CORPORATION'S  
PETITION FOR WRIT OF  
PROHIBITION**

**PA00227-00329  
FILED UNDER SEAL**



**PSER**

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*Attorneys for Plaintiff*

DISTRICT COURT  
CLARK COUNTY, NEVADA

BULLION MONARCH MINING,  
INC.,

Plaintiff,

*vs.*

BARRICK GOLDSTRIKE MINES,  
INC.; BARRICK GOLD  
EXPLORATION INC.; ABX  
FINANCECO INC.; BARRICK GOLD  
CORPORATION; and DOES 1  
through 20,

Defendants.

Case No.: A-18-785913-B

Dep't No.: XI

**PROOF OF SERVICE ON  
DEFENDANT BARRICK GOLD  
CORPORATION**

## CERTIFICATE ATTESTATION

The undersigned authority has the honour to certify, in conformity with Article 6 of the Convention,  
L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention,

- ☒ 1. that the document has been served\*  
que la demande a été exécutée\*

– the (date) / le (date):	27th of August, 2019
– at (place, street, number): à (localité, rue, numéro) :	161 Bay Street, Unit-3700, Toronto, Ontario

– in one of the following methods authorised by Article 5: dans une des formes suivantes prévues à l'article 5 :	
<input checked="" type="checkbox"/>	a) in accordance with the provisions of sub-paragraph a) of the first paragraph of Article 5 of the Convention* selon les formes légales (article 5, alinéa premier, lettre a)*
<input type="checkbox"/>	b) in accordance with the following particular method*: selon la forme particulière suivante* :
<input type="checkbox"/>	c) by delivery to the addressee, if he accepts it voluntarily* par remise simple*

The documents referred to in the request have been delivered to:  
Les documents mentionnés dans la demande ont été remis à :

Identity and description of person: Identité et qualité de la personne :	Mr. Stringer
Relationship to the addressee (family, business or other): Liens de parenté, de subordination ou autres, avec le destinataire de l'acte :	V.P. Corporate Security for Barrick Gold Corporation.

- ☐ 2. that the document has not been served, by reason of the following facts\*:  
que la demande n'a pas été exécutée, en raison des faits suivants\*:

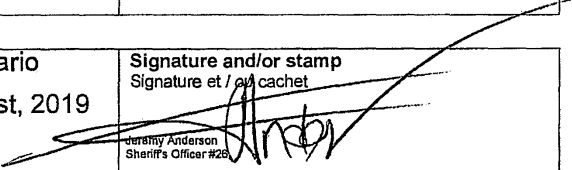
--

- ☐ In conformity with the second paragraph of Article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement\*.  
Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint\*.

### Annexes / Annexes

Documents returned: Pièces renvoyées :	As per request for service -Attached-
In appropriate cases, documents establishing the service: Le cas échéant, les documents justificatifs de l'exécution :	

\* if appropriate / s'il y a lieu

Done at / Fait à The / le	Toronto, Ontario 29th of August, 2019	Signature and/or stamp Signature et / ou cachet  Jennifer Anderson Sheriff's Officer #28
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**REQUEST  
FOR SERVICE ABROAD OF JUDICIAL OR  
EXTRAJUDICIAL DOCUMENTS**

DEMANDE AUX FINS DE SIGNIFICATION OU DE NOTIFICATION À L'ÉTRANGER  
D'UN ACTE JUDICIAIRE OU EXTRAJUDICIAIRE

**Convention on the Service Abroad of Judicial and Extrajudicial Documents in  
Civil or Commercial Matters, signed at The Hague, the 15th of November 1965.**  
Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en  
matière civile ou commerciale, signée à La Haye le 15 novembre 1965.

<b>Identity and address of the applicant</b> Identité et adresse du requérant <small>DANIEL F. POLSENBERG (SSN 2378) JOEL D. HEIRIDD (SSN 8492) ABRAHAM G. SMITH (SSN 13 250) LEWIS ROCA ROTHGERBER CHRISTIE LLP 3993 Howard Hughes Parkway, Suite 600 Las Vegas, Nevada 89169-5065 (702) 949-8200</small>	<b>Address of receiving authority</b> Adresse de l'autorité destinataire <small>Ministry of the Attorney General Ontario Court of Justice 393 Main Street Halleybury, Ontario P0J 1K0, Canada</small>
--	---

The undersigned applicant has the honour to transmit – in duplicate – the documents listed below and, in conformity with Article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e.:

Le requérant soussigné a l'honneur de faire parvenir – en double exemplaire – à l'autorité destinataire les documents ci-dessous énumérés, en la priant, conformément à l'article 5 de la Convention précitée, d'en faire remettre sans retard un exemplaire au destinataire, à savoir :

<b>(Identity and address)</b> (identité et adresse)	<b>Barrick Gold Corporation</b> 161 Bay Street, Suite 3700 Toronto, Ontario M5J 2S1 Canada
--	---

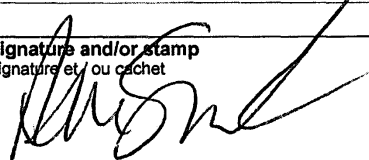
<input checked="" type="checkbox"/>	a)	In accordance with the provisions of sub-paragraph a) of the first paragraph of Article 5 of the Convention* selon les formes légales (article 5, alinéa premier, lettre a)*
<input type="checkbox"/>	b)	In accordance with the following particular method (sub-paragraph b) of the first paragraph of Article 5)*: selon la forme particulière suivante (article 5, alinéa premier, lettre b)* :
<input type="checkbox"/>	c)	by delivery to the addressee, if he accepts it voluntarily (second paragraph of Article 5)* le cas échéant, par remise simple (article 5, alinéa 2)*

The authority is requested to return or to have returned to the applicant a copy of the documents - and of the annexes\* - with the attached certificate.  
Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte - et de ses annexes\* - avec l'attestation ci-jointe.

**List of documents / Énumération des pièces**

Summons; Complaint (Jury Trial Demanded); Business Court Civil Cover Sheet; Initial Appearance Fee Disclosure

\* If appropriate / s'il y a lieu

<b>Done at / Fait à</b> Las Vegas, Nevada, USA <b>The / le</b> July 16, 2019	<b>Signature and/or stamp</b> Signature et / ou cachet 
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## CERTIFICATE ATTESTATION

The undersigned authority has the honour to certify, in conformity with Article 6 of the Convention,  
L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention,

- ☐ 1. that the document has been served\*  
que la demande a été exécutée\*

– the (date) / le (date):	
– at (place, street, number): à (localité, rue, numéro) :	

– in one of the following methods authorised by Article 5: dans une des formes suivantes prévues à l'article 5 :	
<input type="checkbox"/>	a) In accordance with the provisions of sub-paragraph a) of the first paragraph of Article 5 of the Convention* selon les formes légales (article 5, alinéa premier, lettre a)*
<input type="checkbox"/>	b) In accordance with the following particular method*: selon la forme particulière suivante* :
<input type="checkbox"/>	c) <del>by delivery to the addressee, if he accepts it voluntarily*.</del> <del>par remise simple*</del>

The documents referred to in the request have been delivered to:  
Les documents mentionnés dans la demande ont été remis à :

Identity and description of person: Identité et qualité de la personne :	
Relationship to the addressee (family, business or other): Liens de parenté, de subordination ou autres, avec le destinataire de l'acte :	

- ☐ 2. that the document has not been served, by reason of the following facts\*:  
que la demande n'a pas été exécutée, en raison des faits suivants\*:

--

- ☐ In conformity with the second paragraph of Article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement\*.  
Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint\*.

### Annexes / Annexes

Documents returned: Pièces renvoyées :	
In appropriate cases, documents establishing the service: Le cas échéant, les documents justificatifs de l'exécution :	

\* If appropriate / s'il y a lieu

Done at / Fait à  The / le	Signature and/or stamp Signature et / ou cachet
----------------------------------	--

**WARNING**  
AVERTISSEMENT

**Identity and address of the addressee**  
**Identité et adresse du destinataire**

Barrick Gold Corporation  
161 Bay Street, Suite 3700  
Toronto, Ontario M5J 2S1  
Canada

**IMPORTANT**

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE 'SUMMARY OF THE DOCUMENT TO BE SERVED' WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

IF YOUR FINANCIAL RESOURCES ARE INSUFFICIENT YOU SHOULD SEEK INFORMATION ON THE POSSIBILITY OF OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.

ENQUIRIES ABOUT THE AVAILABILITY OF LEGAL AID OR ADVICE IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED MAY BE DIRECTED TO:

**TRÈS IMPORTANT**

LE DOCUMENT CI-JOINT EST DE NATURE JURIDIQUE ET PEUT AFFECTER VOS DROITS ET OBLIGATIONS. LES « ÉLÉMENTS ESSENTIELS DE L'ACTE » VOUS DONNENT QUELQUES INFORMATIONS SUR SA NATURE ET SON OBJET. IL EST TOUTEFOIS INDISPENSABLE DE LIRE ATTENTIVEMENT LE TEXTE MÊME DU DOCUMENT. IL PEUT ÊTRE NÉCESSAIRE DE DEMANDER UN AVIS JURIDIQUE.

SI VOS RESSOURCES SONT INSUFFISANTES, RENSEIGNEZ-VOUS SUR LA POSSIBILITÉ D'OBTENIR L'ASSISTANCE JUDICIAIRE ET LA CONSULTATION JURIDIQUE, SOIT DANS VOTRE PAYS, SOIT DANS LE PAYS D'ORIGINE DU DOCUMENT.

LES DEMANDES DE RENSEIGNEMENTS SUR LES POSSIBILITÉS D'OBTENIR L'ASSISTANCE JUDICIAIRE OU LA CONSULTATION JURIDIQUE DANS LE PAYS D'ORIGINE DU DOCUMENT PEUVENT ÊTRE ADRESSÉES À :

District Court  
Clark County Nevada  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, Nevada 89155

**It is recommended that the standard terms in the notice be written in English and French and where appropriate also in the official language, or in one of the official languages of the State in which the document originated. The blanks could be completed either in the language of the State to which the document is to be sent, or in English or French.**

Il est recommandé que les mentions imprimées dans cette note soient rédigées en langue française et en langue anglaise et le cas échéant, en outre, dans la langue ou l'une des langues officielles de l'État d'origine de l'acte. Les blancs pourraient être remplis, soit dans la langue de l'État où le document doit être adressé, soit en langue française, soit en langue anglaise.

## SUMMARY OF THE DOCUMENT TO BE SERVED

### ÉLÉMENTS ESSENTIELS DE L'ACTE

**Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at The Hague, the 15th of November 1965 (Article 5, fourth paragraph).**

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye le 15 novembre 1965 (article 5, alinéa 4).

<b>Name and address of the requesting authority:</b> Nom et adresse de l'autorité requérante :	DANIEL F. POLSENBERG (SBN 2376) JOEL D. HENRIOD (SBN 8482) ABRAHAM G. SMITH (SBN 13,260) LEWIS ROCA ROTHGERBER CHRISTIE LLP 3993 Howard Hughes Parkway, Suite 600 Las Vegas, Nevada 89169-5996 (702) 949-8200
---	---

<b>Particulars of the parties*:</b> Identité des parties* :	Barrick Gold Corporation 161 Bay Street, Suite 3700 Toronto, Ontario M5J 2S1 Canada
--	--

\* If appropriate, identity and address of the person interested in the transmission of the document  
 S'il y a lieu, identité et adresse de la personne intéressée à la transmission de l'acte

☐ **JUDICIAL DOCUMENT\*\***  
 ACTE JUDICIAIRE\*\*

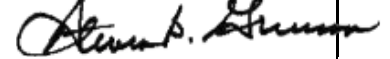
<b>Nature and purpose of the document:</b> Nature et objet de l'acte :	To give notice to the Defendant of the commencement of a civil claim for monetary damages, and to summons it to serve written defenses to the claim
<b>Nature and purpose of the proceedings and, when appropriate, the amount in dispute:</b> Nature et objet de l'instance, le cas échéant, le montant du litige :	Civil claim for monetary damages with determination of issues as stated in the documents to be determined by the Court of Original Jurisdiction.
<b>Date and Place for entering appearance**:</b> Date et lieu de la comparution** :	N/A
<b>Court which has given judgment**:</b> Jurisdiction qui a rendu la décision** :	N/A
<b>Date of judgment**:</b> Date de la décision** :	N/A
<b>Time limits stated in the document**:</b> Indication des délais figurant dans l'acte** :	Within 20 calendar days after service (not counting the day of service) the Defendant must file an answer to the attached complaint. The answer or motion must also be served on the plaintiff or plaintiff's attorney.

\*\* If appropriate / s'il y a lieu

☐ **EXTRAJUDICIAL DOCUMENT\*\***  
 ACTE EXTRAJUDICIAIRE\*\*

<b>Nature and purpose of the document:</b> Nature et objet de l'acte :	N/A
<b>Time-limits stated in the document**:</b> Indication des délais figurant dans l'acte** :	N/A

\*\* If appropriate / s'il y a lieu



**ORDR**

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*Attorneys for Plaintiff*

DISTRICT COURT  
CLARK COUNTY, NEVADA

BULLION MONARCH MINING,  
INC.,

Plaintiff,

*vs.*

BARRICK GOLDSTRIKE MINES,  
INC.; BARRICK GOLD  
EXPLORATION INC.; ABX  
FINANCECO INC.; BARRICK GOLD  
CORPORATION; and DOES 1  
through 20,

Defendants.

Case No. A-18-785913-B

Dep't No. 11

**ORDER GRANTING PLAINTIFF'S  
"MOTION FOR LEAVE TO FILE  
AMENDED COMPLAINT"**

Hearing Date: January 13, 2020  
Hearing Time: 9:00 a.m.

On January 13, 2020, this Court heard plaintiff Bullion Monarch Mining, Inc.'s motion for leave to file an amended complaint. Having considered the briefs, oral argument, and the record before the Court, the Court orders as follows:

1 Because of Nevada's policy to grant amendment and allow cases to be de-  
2 termined on their merits, the Court GRANTS the motion.

3 Dated this 21st day of May, 2020.

4  
5   
DISTRICT COURT JUDGE

6 Respectfully submitted by:  
7 LEWIS ROCA ROTHGERBER CHRISTIE LLP

8 By: /s/ Abraham G. Smith

9 DANIEL F. POLSENBERG (SBN 2376)  
10 J CHRISTOPHER JORGENSEN (SBN 5382)  
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14 KENT ROBISON (SBN 1167)  
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16 *Attorneys for Plaintiff*  
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1 Approved as to form and content by:

2 PARSONS BEHLE & LATIMER

3  
4 By: No Response

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6 ASHLEY C. NIKKEL (SBN 12,838)  
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9 (775) 323-1601

7 BRANDON J. MARK (*pro hac vice*)  
8 201 S. Main Street, Suite 1800  
9 Salt Lake City, Utah 84111  
(801) 532-1234

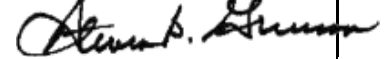
10 *Attorneys for Defendants Barrick Goldstrike Mines, Inc.,*  
11 *Barrick Gold Exploration Inc. and ABX Financeco, Inc.*

11 PISANELLI BICE PLLC

12  
13 By: No Response

13 JAMES J. PISANELLI (SBN 4207)  
14 DEBRA L. SPINELLI (SBN 9695)  
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18 Las Vegas, Nevada 89101  
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17 *Attorneys for Defendant Barrick Gold Corporation*



**ORDR**

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ASmith@LRRC.com

*Attorneys for Plaintiff*

DISTRICT COURT  
CLARK COUNTY, NEVADA

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BARRICK GOLDSTRIKE MINES,  
INC.; BARRICK GOLD  
EXPLORATION INC.; ABX  
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Defendants.

Case No. A-18-785913-B

Dep't No. 11

**ORDER REGARDING MOTION FOR  
CLARIFICATION OR,  
ALTERNATIVELY, FOR LEAVE TO  
FILE AMENDED COMPLAINT**

Hearing Date: July 9, 2020

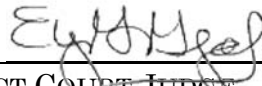
Hearing Time: 9:00 a.m.

On July 9, 2020, this Court heard plaintiff Bullion Monarch Mining, Inc.'s motion for clarification or, alternatively, leave to file a second amended complaint.



1 Having considered the briefs and oral argument, this Court DENIES the  
2 motion for clarification and GRANTS the alternative request to file the second  
3 amended complaint attached to the motion. Bullion may file under seal the un-  
4 redacted complaint, and publicly file the complaint with paragraphs 29 and 30  
5 redacted.

6 Dated this 14th day of July, 2020.

7  
8   
DISTRICT COURT JUDGE

9 Respectfully submitted by:  
10 LEWIS ROCA ROTHGERBER CHRISTIE LLP  
11

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Approved as to form and content by:

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By: /s/ Dustun H. Holmes

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Inc.*

## Helm, Jessica

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**Sent:** Monday, July 13, 2020 8:02 AM  
**To:** Smith, Abraham; Dustun Holmes; Debra Spinelli; James Pisanelli; Michael R. Kealy; Ashley C. Nikkel  
**Cc:** Clay Brust (CBrust@rssblaw.com); Polsenberg, Daniel F.; Helm, Jessica; Noltie, Lisa; Jorgensen, J. Christopher  
**Subject:** RE: Bullion v. Barrick amended complaint

[EXTERNAL]

---

Abe:

All defendants agree to the version Dustun circulated. You can use my e-signature.

Yours,  
Brandon



A Professional  
Law Corporation

**Brandon J. Mark • Shareholder • Admitted in Utah and Oregon**  
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**Subject:** RE: Bullion v. Barrick amended complaint

OK. All defendants agree to this? Whose e-signature may we add for Barrick Goldstrike/Exploration?

---

**From:** Dustun Holmes <DHH@pisanellibice.com>  
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**Subject:** RE: Bullion v. Barrick amended complaint

[EXTERNAL]

---

Abe,

Attached is the order with defendants' revisions.

Thanks,

Dustun

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**From:** Smith, Abraham [<mailto:ASmith@lrrc.com>]

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**Subject:** RE: Bullion v. Barrick amended complaint

CAUTION: External Email

Friends,

Attached for your approval is the order from today's hearing.

Best,

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Associate  
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**COVID-19 questions?**

**APPENDIX IN SUPPORT  
OF PETITIONER  
BARRICK GOLD  
CORPORATION'S  
PETITION FOR WRIT OF  
PROHIBITION**

**PA00344-00390  
FILED UNDER SEAL**



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*Attorneys for Defendant Barrick Gold Corporation*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BULLION MONARCH MINING, INC.,

Plaintiff,

v.

BARRICK GOLDSTRIKE MINES, INC.;  
BARRICK GOLD EXPLORATION INC.;  
BARRICK GOLD CORPORATION;  
NEVADA GOLD MINES, LLC; BARRICK  
NEVADA HOLDING LLC; and DOES 1  
through 20,

Defendants.

Case No.: A-18-785913-B

Dept. No.: XI

**(HEARING REQUESTED)**

**BARRICK GOLD CORPORATION'S  
MOTION TO DISMISS PLAINTIFF'S  
SECOND AMENDED COMPLAINT**

More than a decade ago, Bullion Monarch Mining, Inc. ("Bullion") improperly sought to haul Barrick Gold Corporation ("Barrick Gold") – the ultimate foreign parent company of the Barrick family of companies – into federal court in Nevada for the same case presented here. In that federal action, Barrick Gold filed a motion to dismiss for lack of personal jurisdiction in 2009 which Bullion did not contest. Rather, conceding the lack of personal jurisdiction, *Bullion chose to dismiss Barrick Gold*. And, for the next decade, *Bullion chose not to enforce any purported claims against Barrick Gold*.

Nearly ten years later in December 2018, after the United States District Court, District of Nevada, dismissed the rest of Bullion's case, Bullion decided to try to resuscitate its long-expired

1 claims against Barrick Gold.<sup>1</sup> But whether Bullion can proceed with its claims against any other  
2 named defendant, the law does not allow Bullion to resurrect its claims against Barrick Gold.

3 First, much like all of Bullion's previous complaints, Bullion's Second Amended  
4 Complaint fails to allege any facts that would subject Barrick Gold to personal jurisdiction in  
5 Nevada. As Bullion confessed a decade ago, Barrick Gold does not belong in Nevada courts.  
6 Knowing this, Bullion attempts to fabricate entirely new theories based on the notion that  
7 Barrick Gold is subject to jurisdiction (and indirect liability) through its subsidiaries' Nevada  
8 contacts. But Bullion is claiming a royalty on the production of gold from mines on land in what  
9 it purports to be the "area of interest." It is axiomatic that the only entities that would be remotely  
10 subject to Bullion's claim are the entities that hold legal title to the land and corresponding  
11 mineral rights. And, of course, Bullion has named those entities in this action as defendants –  
12 Goldstrike and Nevada Gold Mines. Naming nearly every other entity up the corporate chains is  
13 not only improper, but also entirely unnecessary. Barrick Gold is not a proper party to this  
14 proceeding.

15 Second, Bullion's strategic choice in 2009 bars its renewed attempt to enforce any  
16 supposed direct claims (and there aren't any) against Barrick Gold. Specifically, Bullion's desire  
17 to now revive its voluntarily-dismissed claims against Barrick Gold is barred under NRS 11.190,  
18 Nevada's applicable statute of limitations.

19 Third, although these two points are fatal to Bullion's efforts, Bullion's newly-devised  
20 "claim" for constructive trust should be dismissed as Bullion fails to state a claim upon which  
21 relief can be granted.

22  
23  
24 <sup>1</sup> Bullion's original complaint in this Court was filed in December 2018. Barrick Gold was  
25 served through the Hague Convention in September 2019, and filed a motion to dismiss in  
26 October 2019. While Barrick Gold's motion to dismiss was pending, the Court granted Bullion's  
27 request for leave to file an amended complaint. Bullion waited to file and serve its First Amended  
28 Complaint during the stay pending the Nevada Supreme Court's decision on Goldstrike's writ  
petition. Once the stay was lifted in June 2020, Bullion filed the First Amended Complaint and  
immediately sought leave to file its Second Amended Complaint, which the Court granted.  
Accordingly, Barrick Gold now files this motion to dismiss directed at Bullion's Second Amended  
Complaint – the operative pleading.

1 This Motion is based on the following Memorandum of Points and Authorities, attached  
2 exhibits, and any oral arguments allowed by this Court at the time of hearing.

3 DATED this 28th day of July, 2020.

4 PISANELLI BICE PLLC

5 By: /s/ James J. Pisanelli  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

In June 2009, Bullion filed suit in federal court, naming Barrick Gold and Barrick Goldstrike Mines, Inc. ("Goldstrike") (an indirect subsidiary of Barrick Gold) for the same substantive claims presented here. Barrick Gold immediately moved to dismiss for lack of personal jurisdiction. Barrick Gold supported its motion with a detailed declaration establishing that it lacks any contacts with the Nevada forum. Without filing an opposition or otherwise contesting the facts, Bullion stipulated to the dismissal of Barrick Gold. That should have been the end of Barrick Gold's involvement in this litigation.

Tellingly, after dismissing Barrick Gold, Bullion took no action to enforce any purported claims or rights against Barrick Gold. In this regard, Bullion's inaction spoke louder than anything Barrick Gold could have argued during those silent ten years. Yet, in December 2018, after dismissal of its federal case against Goldstrike (and an identical federal case against Newmont), Bullion refiled exactly the same claims in Nevada state court, choosing to add back in the dismissed Barrick Gold as a defendant. However, Bullion's sudden, renewed intent carries the same defects (and more) that plagued its original claims against Barrick Gold. That is, Bullion's failure to enforce its claims against Barrick Gold after voluntarily dismissing them from the federal lawsuit within the applicable statute of limitations means those claims are forever barred. This result was Bullion's choice.

Moreover, like its complaint from ten years ago, Bullion's Second Amended Complaint in this action fails to allege any facts that would subject Barrick Gold to jurisdiction in Nevada. Bullion's newly-minted theories – that Barrick Gold is purportedly subject to jurisdiction in Nevada through its subsidiaries' contract under either an agency and/or alter ego theory – change nothing. Barrick Gold's sole relation to this venue is the fact that it is a foreign parent company to United States subsidiaries operating in Nevada. Yet, Barrick Gold and its subsidiaries remain separate and distinct legal entities *as the law presumes*. Remarkably, after all of this time and despite discovery and jurisdictional discovery, Bullion has not and cannot make any showing that would warrant a finding that Barrick Gold's subsidiaries are merely its agents or its alter ego.

1 And there is no need for Barrick Gold to be in this lawsuit given that the entities that owned/own  
2 the land are named parties to this action.<sup>2</sup> Try as Bullion might, Barrick Gold is not subject to  
3 jurisdiction in Nevada.

4 **II. STATEMENT OF FACTS**

5 **A. Bullion Stipulated to Dismiss Barrick Gold from the Federal Action in**  
6 **Nevada Because Nevada Courts Lack Personal Jurisdiction over**  
7 **Barrick Gold.**

8 Bullion's tortured attempts to drag Barrick Gold into Nevada for the claims presented  
9 dates back nearly a decade. Specifically, in June 2009, Bullion amended its complaint in the  
10 federal court action filed against Newmont USA Limited to name Barrick Gold and  
11 Barrick Goldstrike Mines Inc. ("Goldstrike") as defendants. (*See* Ex. A, First Am. Compl.,  
12 *Bullion Monarch Mining v. Newmont USA Ltd.*, 3:08-cv-00227 (D. Nev.).)<sup>3</sup> Hoping to avoid the  
13 fact that Barrick Gold and Goldstrike were (and continue to be) separate and distinct legal  
14 entities, Bullion's allegations in federal court were intentionally vague, and merely "lumped  
15 together" Barrick Gold and Goldstrike for jurisdictional purposes – treating them as one  
16 indistinguishable entity even though each has vastly different contacts or, in the case of  
17 Barrick Gold, no contacts – with the Nevada forum. (*Id.*) (Bullion does that again, here.)

18 In response to Bullion's overreach in the federal action, Barrick Gold immediately moved  
19 to dismiss for lack of personal jurisdiction. (Ex. B, Barrick Gold Mem. for Motion to Dismiss  
20 at 1, July 16, 2009, *Bullion Monarch Mining v. Newmont USA Ltd.*, 3:08-cv-00227 (D. Nev.).)

21 <sup>2</sup> Bullion asserts an alter ego "claim," but by all measure no substantive direct claims  
22 against Barrick Gold. To the extent Bullion believes it will get a money judgment in its favor on  
23 its royalty claims, Bullion has not alleged, much less established, that the entity owners of the  
24 land and the mineral rights would be unable to satisfy any judgment. There is no legal basis for  
25 Barrick Gold to be hauled into Nevada court, but there is no potential liability on a direct  
26 substantive claim against Barrick Gold. And a collection action is not, and may never be, ripe.

27 <sup>3</sup> The Court is permitted to take judicial notice and consider the filings in the federal action  
28 in deciding the motion to dismiss. *See, e.g., Brelant v. Preferred Equities Corp.*, 109 Nev. 842,  
847, 858 P.2d 1258, 1261 (1993) (court may take into account matters of public record, orders,  
items present in the record of the case, and any exhibits attached to the complaint when ruling on  
a motion to dismiss); *Mack v. Estate of Mack*, 125 Nev. 80, 92, 206 P.3d 98, 106 (2009) (taking  
judicial notice of related court proceedings); *see also Asdar Group v. Pillsbury, Madison & Sutro*,  
99 F.3d 289, 290 n.1 (9th Cir. 1996) (court may take judicial notice of the pleadings and court  
orders in earlier related proceedings); *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504  
(9th Cir.1986) (court may take judicial notice of public records without converting a motion to  
dismiss into a motion for summary judgment).

1 Barrick Gold's motion established through, among other things, a declaration of Sybil Veenman,  
2 that Barrick Gold had no presence in Nevada, had no contacts with Nevada, and was not subject  
3 to jurisdiction in Nevada. (Ex. C, Declaration of Sybil Veenman, Barrick Gold's then-corporate  
4 secretary, July 16, 2009.) Additionally, Ms. Veenman's declaration established that Barrick Gold  
5 and its subsidiaries observed all corporate formalities and properly maintained their separate  
6 corporate existence. (*Id.*)

7 From the very beginning, Barrick Gold was nothing but forthcoming to Bullion  
8 concerning Barrick Gold and its subsidiaries' structure. Indeed, as Barrick Gold informed Bullion  
9 back in 2009, Goldstrike is a wholly-owned subsidiary of Barrick Gold Exploration Inc.  
10 ("Exploration"). Exploration, in turn, is a wholly-owned subsidiary of ABX Financero Inc.  
11 ("ABX"), and ABX is a wholly-owned subsidiary of Barrick Gold. (*Id.*)<sup>4</sup> Yet, as the evidence  
12 submitted in support of Barrick Gold's motion to dismiss in the federal action established,  
13 Barrick Gold and its subsidiaries observed all corporate formalities and properly maintained their  
14 separate corporate existence. (*Id.*) Instead of contesting any of these facts or making any sort of  
15 assertion that Barrick Gold was subject to jurisdiction through its subsidiaries' contacts, Bullion  
16 voluntarily dismissed Barrick Gold. (Ex. D, Stipulation for Dismissal, July 27, 2009.)

17 Despite confessing on the very face of the complaint that all that *all of its purported*  
18 *claims against Barrick Gold accrued in June 2009*, Bullion fails to tell this Court of its original  
19 action and subsequent abandonment of those claims. (Sec. Am. Compl. ¶ 33.)<sup>5</sup> Setting aside  
20 those dispositive facts, Bullion will concede, as it must, that it took no action to preserve or  
21

22  
23 <sup>4</sup> This is not the first time Bullion improperly attempted to name a Barrick entity that is not  
24 subject to jurisdiction in Nevada. Recall, Bullion initially named ABX here, *only to dismiss ABX*  
25 *after wasting significant time and resources in jurisdictional discovery to uncover what was*  
26 *publicly available and known to Bullion long ago*. That is, the corporate formalities were upheld  
and ABX was not subject to jurisdiction in Nevada, and not subject to liability related to the  
royalty claims in this action. *Bullion's naming of Barrick Gold is no different*. In fact,  
Barrick Gold is further removed than ABX.

27 <sup>5</sup> Bullion made this same admission – that the claims alleged in the complaint accrued in  
28 June 2009 – elsewhere to this Court. (*See, e.g.*, Bullion's Opp'n to Mot. for Summ. Judg. on  
Savings Stat., 3:20-22, 10:7-10, on file, July 27, 2019.)

1 enforce its purported claims against Barrick Gold. Rather, Bullion just let years pass. Nothing  
2 has changed that would warrant Barrick Gold being subject to jurisdiction in Nevada.

3 **B. Bullion Conducts Jurisdictional Discovery in the Federal Case that Confirms**  
4 **Barrick Gold Does Not Control the Day-to-Day Operations of Its Subsidiaries**  
5 **and Properly Respects Their Corporate Separateness.**

6 Confirming as much, after dismissing Barrick Gold, Bullion decided to proceed solely  
7 against Goldstrike, the then-owner of the land and mineral rights. During the federal case – as  
8 part of the subject-matter jurisdiction issue that later arose in that action – Bullion conducted  
9 wide-ranging jurisdictional discovery.<sup>6</sup> And, Bullion subsequently used that jurisdictional  
10 discovery to suggest that Barrick Gold improperly controlled the activities of its subsidiaries,  
11 effectively making its subsidiary's headquarters "Toronto, Canada – the headquarters of [their]  
12 ultimate corporate parent." (Ex. E, Order Dismissing Claims at 8, Nov. 1, 2018, *Bullion Monarch*  
13 *Mining v. Barrick Goldstrike Mines Inc.*, 3:09-cv-00612 (D. Nev.).) Of course, had Bullion  
14 established that Barrick Gold's Toronto headquarters controlled the activities of Goldstrike,  
15 Bullion could have maintained the case in federal court. But the federal court rejected Bullion's  
16 contention, finding that the "unrebutted evidence tends to show that [Goldstrike's] executives in  
17 Salt Lake City – not Toronto – directed and controlled [Goldstrike's] activities." (*Id.*) Bullion  
18 now seeks to peddle this same *rejected story* to this Court – *a story that Bullion has now*  
19 *conceded is unsupportable by abandoning its appeal with Ninth Circuit*. (Ex. F, Ninth Circuit  
20 Order Granting Bullion's Mot. to Dismiss Appeal).

21 The jurisdictional discovery in federal court conclusively established that Barrick Gold  
22 respects its subsidiaries' separate corporate existence and does not improperly control them. For  
23 example, the former general manager of the Goldstrike mine in Nevada, John Mansanti, testified  
24 that management in Toronto "very rarely" directs activities across its subsidiaries. The directives  
25 that originate at Barrick Gold usually relate to improving efficiency, such as centralizing the

26 <sup>6</sup> As the Nevada Supreme Court has made clear, if a party had the benefit of discovery from  
27 a prior litigation before filing the complaint and still fails to allege facts indicating the court might  
28 have jurisdiction, then jurisdictional discovery is properly denied. *Tricarichi v. Coop. Rabobank, U.A.*, 135 Nev. 87, 98, 440 P.3d 645, 654 (2019) (finding that the district court did not abuse its discretion in denying jurisdictional discovery because the plaintiff had the benefit of discovery from a prior proceeding and still failed to allege facts indicating the court might have jurisdiction).

1 purchase of truck tires, or standardizing practices, such as supply-chain management. (Ex. G,  
2 Mansanti Dep. Tr., Dec. 20, 2017, 66:12-20; Ex. H, Measom Dep. Tr., March 21, 2018,  
3 11:18-12:13; Ex. I, Astorga Dep. Tr., March 20, 2018, 36:3-17.) As an example, Barrick Gold  
4 has standard processes and policies for tracking and reporting "non-routine spending and capital  
5 management." (Ex. J, Bolland Dep. Tr., March 21, 2018, 51:25-52:5.) However, these policies  
6 are communicated to Barrick Gold's subsidiaries through regional management. (Ex. I, Astorga  
7 Dep. Tr. 35:15-36:2, 36:18-20; Ex. J, Bolland Dep. Tr. 13:20-14:5.)

8 Mr. Mansanti, Goldstrike's former general manager, estimated that Barrick Gold of  
9 North America Inc.'s ("Barrick North America") Salt Lake City-based management controlled  
10 corporate decisions for Goldstrike "98, 99 percent of the time." (Ex. G, Mansanti  
11 Dep. Tr. 67:1-10.) Barrick Gold was not involved in setting the budgets for  
12 Barrick North America or for Goldstrike, and Barrick Gold never overruled  
13 Barrick North America's budget decisions, including its budgeting for Goldstrike. (Ex. H,  
14 Measom Dep. Tr. 22:13-25, 44:16-45:11.) Barrick North America was "much more" involved in  
15 setting Goldstrike's budget than Barrick Gold was, and none of Barrick North America's operating  
16 capital comes from Barrick Gold. (*Id.* at 46:4-8, 47:25-48:2.)

17 Barrick North America's Director of Technical Services, Andy Bolland, and its  
18 Contract Supervisor, Tony Astorga, both testified that they never communicated with  
19 Barrick Gold personnel as part of their jobs. (Ex. J, Bolland Dep. Tr. 17:9-11; Ex. I,  
20 Astorga Dep. Tr. 35:9-14.) Likewise, Barrick North America's former CFO, Blake Measom,  
21 testified that he had no reporting relationship to Barrick Gold. (Ex. H, Measom  
22 Dep. Tr. 12:12-14.) Goldstrike's former general manager testified that during regular conference  
23 calls with the other managers of Barrick's North American mines and regional management in  
24 Salt Lake City, no one from Barrick Gold participated. (Ex. G, Mansanti Dep. Tr. 16:12-17:15.)  
25 In response to the direct question of whether Barrick Gold had more "oversight and control" over  
26 its North American subsidiaries than Barrick North America had over them, Mr. Bolland testified  
27 "definitely not." (Ex. J, Bolland Dep. Tr. 60:10-19.)

28

1 In short, the mandate from Barrick Gold to its United States subsidiaries was clear in that  
2 they would operate as their own "business" and "make the decisions as to how that business is  
3 operated" on "[v]irtually everything," including decisions relating to the deployment of "capital,"  
4 "personnel," and "production," all the way to "creating budgets" and "reporting." (Ex. H,  
5 Measom Dep. Tr. 12:4-11.)

6 C. **Bullion Seeks to Revive its Long-Dismissed Claims against Barrick Gold, But**  
7 **Barrick Gold Still Has No Contacts with Nevada Sufficient for Jurisdiction.**

8 Following the dismissal of its federal cases against Newmont and Goldstrike, Bullion  
9 commenced the current action in the Eighth Judicial District Court in December 2018.  
10 Remarkably, despite dismissing Barrick Gold long ago and never taking any action in the nearly  
11 ten-year span since to enforce any purported claims against Barrick Gold, Bullion's complaint  
12 sought to once again bring Barrick Gold into the mix.

13 By and large, Bullion's operative complaint (now, the Second Amended Complaint)  
14 presents the same substantive claims as in its federal case. Yet, realizing Barrick Gold had – and  
15 still has – no contacts in Nevada sufficient to confer personal jurisdiction, Bullion has now  
16 asserted newly-contrived contentions that Barrick Gold is purportedly subject to jurisdiction in  
17 Nevada through its subsidiaries' contacts under either an alter ego or agency theory.  
18 (Sec. Am. Compl., ¶ 10 ("[T]he jurisdictional contacts of Goldstrike" are "attributed to . . .  
19 Barrick Gold . . ." as an "agent or alter ego of Goldstrike.")) Of course, the sparse factual  
20 allegations (as opposed to the many conclusory legal allegations) included in Bullion's  
21 Second Amended Complaint are insufficient.

22 Just as in 2009, Barrick Gold has no contacts in Nevada sufficient to confer personal  
23 jurisdiction. Barrick Gold remained a Canadian corporation headquartered in Toronto from its  
24 dismissal from the federal action in 2009 to December 2018 (and to date). (*Compare*  
25 *Veenman Decl., Ex. C, with Declaration of Dana Stringer, Oct. 11, 2019, Barrick Gold's current*  
26 *corporate secretary, ¶¶ 2-3, Exhibit K.*) Barrick Gold remained the ultimate parent company of a  
27 worldwide group of separate subsidiaries, and it remained without any contacts in Nevada except  
28 through those subsidiaries. (*Compare Veenman Decl., Ex. C, with Stringer Decl. ¶ 21, Ex. K.*)

1 At the time Bullion filed this action in December 2018, Barrick Gold had eight officers,  
2 seven of which were located in Toronto, one was located in Florida, and none were located in  
3 Nevada. (Stringer Decl., Ex. K ¶ 4.)<sup>7</sup> Barrick Gold had thirteen members on its Board of  
4 Directors. Three of Barrick Gold's directors lived in Toronto, Canada; two lived in Nevada; five  
5 lived in other areas of the United States (New York, Florida, California, Colorado, and  
6 Pennsylvania), and three resided outside of the United States and Canada (Argentina, Chile and  
7 the Dominican Republic). (*Id.* ¶ 6.)

8 In 2018, Barrick Gold's Board of Directors held its meetings in Toronto, Canada, and  
9 Barrick Gold's corporate records are maintained there. (*Id.* ¶¶ 7-8.)

10 Barrick Gold is not registered to do business as a foreign corporation in Nevada under  
11 NRS 80.060 because it does not own any property in Nevada and does not conduct any business  
12 in Nevada. (*Id.* ¶ 12.) Barrick Gold has never registered to do business as a foreign corporation  
13 in Nevada, never owned property in Nevada, and never conducted any business in the state.  
14 Therefore, it has never appointed a registered agent under Nevada law for service of process in  
15 the state. (*Id.* ¶ 13.)

16 At the time Bullion filed this action, Barrick Gold had never directly participated in a joint  
17 venture or partnership owning properties in Nevada, had never designed, manufactured,  
18 advertised, delivered, or sold any goods, services, or products in Nevada, and had never entered  
19 into any license or distribution agreements involving Nevada. (*Id.* ¶¶ 14-20.)

20 In Nevada, Barrick Gold does not have: (1) any employees, (2) an office or telephone  
21 listing, or (3) any bank accounts. (*Id.*) Barrick Gold does not pay any taxes in Nevada or to any  
22 Nevada taxing authority. (*Id.*)

23 When Bullion filed this state court action, Barrick Gold had no presence in Nevada,  
24 except through a lengthy chain of separately-incorporated U.S. subsidiaries. Barrick Gold was  
25 (and is) the ultimate parent company of several companies that operate in Nevada. For example,  
26 the Goldstrike mine, which is located near Elko, Nevada, was owned by Goldstrike, a Colorado

27 <sup>7</sup> The court's jurisdiction depends upon "the state of things at the time of the action  
28 brought." *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 570, 124 S.Ct. 1920,  
158 L.Ed.2d 866 (2004).

1 corporation. Goldstrike is a subsidiary of Defendant Barrick Gold Exploration, Inc. a  
2 Delaware corporation, which is itself a subsidiary of ABX Financeco Inc. ("ABX"), also a  
3 Delaware corporation. ABX is a direct subsidiary of Barrick Gold. (*Id.* ¶ 21.)

4       Barrick Gold does not itself engage in mining or processing activities or operate mining or  
5 processing facilities within Nevada or the United States. Barrick Gold does not itself own any  
6 equipment or facilities to conduct mining or processing activities in Nevada or the United States.  
7 (*Id.* ¶ 22.) In short, Barrick Gold had no and has no contacts in Nevada sufficient to confer  
8 personal jurisdiction.

9       Importantly, Bullion's Second Amended Complaint fails to allege otherwise. Tellingly,  
10 Bullion fails to allege (because it cannot) that Barrick Gold has taken over or controls the  
11 day-to-day operations of its subsidiaries. Rather, Bullion's Second Amended Complaint alleges  
12 that Barrick North America (not Barrick Gold) managed Goldstrike. (*See* Sec. Am. Comp. ¶ 75.)  
13 Moreover, the few *factual* allegations in Bullion's Second Amended Complaint are insufficient as  
14 a matter of law to establish any sort of agency or alter ego jurisdiction over Barrick Gold.  
15 (*Id.* ¶¶ 74-80.) Specifically, allegations that Goldstrike's NRCP 30(b)(6) witnesses in the federal  
16 action apparently "knew little about Goldstrike," that Goldstrike purportedly failed to hold annual  
17 meetings or register to do business in Utah, that Exploration "had control over Goldstrike's  
18 activities," that Goldstrike's bylaws "state that Goldstrike's principal office is in Canada," and  
19 references to Barrick subsidiaries as "Barrick" in advertisements are insufficient, each and  
20 altogether, and do not reflect an agency or alter ego relationship as a matter of law.

21       Nor does the inclusion of Nevada Gold Mines, LLC ("Nevada Gold Mines") change  
22 Barrick Gold's lack of direct presence in Nevada or its contact with the State.  
23 Nevada Gold Mines is a subsidiary of Barrick Gold through a lengthy chain of separately  
24 incorporated United States subsidiaries. Nevada Gold Mines is owned by Barrick Nevada  
25 Holding LLC ("Barrick Nevada") and Newmont USA Limited. (Ex. L, Stringer Decl., Dec. 18,  
26 2019, ¶ 8.) Barrick Nevada maintains a 61.5% ownership interest in this separate entity. In turn,  
27 various Barrick Gold United States subsidiaries own certain percentages of Barrick Nevada. (*Id.*)  
28 These are all separate and independent entities, with their own corporate formalities. (*Id.* ¶ 11.)



1           Importantly, Bullion does not – and cannot – allege that it needs to drag a foreign  
2 corporation into this case to achieve a remedy. Indeed, there is no reason for Barrick Gold to be a  
3 party to this action. Bullion seeks a royalty on gold from Nevada. The subsidiaries that own that  
4 gold are in Nevada, and have been named in this case.

5       **III.     ARGUMENT**

6           A.     **Barrick Gold Is Not Directly or Indirectly Subject to Personal Jurisdiction in**  
7                    **Nevada.**

8           Bullion's claims against Barrick Gold must be dismissed because, as Bullion conceded  
9 long ago, Nevada courts lack personal jurisdiction over Barrick Gold. Bullion bears the burden of  
10 making a *prima facie* showing of personal jurisdiction over Barrick Gold by "competent evidence  
11 of essential facts" that, if true, would support jurisdiction. *Trump v. Eighth Jud. Dist. Ct.*,  
12 109 Nev. 687, 692, 857 P.2d 740, 743 (1993). "[F]or personal jurisdiction purposes, a court may  
13 not assume the truth of allegations in a pleading which are contradicted by affidavit."  
14 *In re W. States Wholesale Nat. Gas Litig.*, 605 F. Supp. 2d 1118, 1130 (D. Nev. 2009) (citation  
15 omitted).

16           "Jurisdiction over a nonresident defendant is proper *only if* the plaintiff shows that the  
17 exercise of jurisdiction satisfies the requirements of Nevada's long-arm statute and does not  
18 offend principles of due process." *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 374,  
19 328 P.3d 1152, 1156 (2014) (emphasis added). Because Nevada's long-arm statute is coterminous  
20 with the federal constitutional limits, a defendant must have such "minimum contacts" with  
21 Nevada that it could reasonably anticipate being haled into court in the state, consistent with  
22 "traditional notions of fair play and substantial justice." *Arbella v. Mut. Ins. Co. v. Eighth Jud.*  
23 *Dist. Ct.*, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006) (internal marks omitted).

24           Courts analyze personal jurisdiction over a non-resident defendant under two theories:  
25 general and specific personal jurisdiction. *Viega*, 130 Nev. at 375, 328 P.3d at 1156. There is no  
26 question that Barrick Gold is not directly subject to personal jurisdiction in Nevada. Bullion's  
27 complaint does not even attempt to pretend otherwise. Instead, Bullion seeks to establish  
28 jurisdiction over Barrick Gold based on its subsidiaries' purported contact with Nevada.

1 (See Sec. Am. Compl. ¶ 10 ("[T]he jurisdictional contacts of Goldstrike are attributed to . . .  
2 Barrick Gold . . . as each of these defendants is the agent or alter ego of Goldstrike."))

3 Under the law, "corporate entities are *presumed separate*, and thus, the mere existence of  
4 a relationship between a parent company and its subsidiaries is not sufficient to establish personal  
5 jurisdiction over the parent on the basis of the subsidiaries' minimum contacts with the forum."  
6 *Viega*, 130 Nev. at 375, 328 P.3d at 1157 (quotations and citations omitted) (emphasis added).  
7 "Subsidiaries' contacts have been imputed to parent companies only under *narrow exceptions* to  
8 this general rule, including alter ego theory and, at least in cases of specific jurisdiction, the  
9 agency theory." *Id.* (emphasis added). Bullion's attempts to fabricate jurisdiction against  
10 Barrick Gold under these narrow exceptions fail.

11 ***1. Bullion's fabricated alter-ego theory to establish personal jurisdiction of***  
12 ***Barrick Gold in Nevada fails.***

13 Bullion's newly-minted alter-ego theory asserted in the Second Amended Complaint is  
14 nothing more than a fabricated hook to try to bring Barrick Gold into this case. It finds no  
15 support in the law or the facts. "The alter ego theory allows plaintiffs to pierce the corporate veil  
16 to impute a subsidiary's contacts to the parent company by showing that the subsidiary and the  
17 parent are one and the same." *Viega*, 130 Nev. at 376, 328 P.3d at 1157. Not only does Bullion's  
18 effort fail here, but there is no basis or need to pierce the corporate veil.

19 Importantly, a parent-subsidiary relationship does not on its own establish that two entities  
20 are alter egos. *Williams*, 851 F.3d at 1021; *Bonanza Hotel Gift Shop, Inc. v. Bonanza No. 2*,  
21 95 Nev. 463, 466, 596 P.2d 227, 229 (1979) ("A mere showing that one corporation is owned by  
22 another, or that the two share interlocking officers or directors is insufficient to support a finding  
23 of alter ego."). Instead, "[i]t must further be shown that the subsidiary corporation is so organized  
24 and controlled, and its affairs are so conducted that it is, in fact, a mere instrumentality or adjunct  
25 of another corporation." *Bonanza*, 95 Nev. at 466, 596 P.2d at 229 (quotations and citations  
26 omitted).

27 To prove alter ego for jurisdictional purposes, Bullion must make a *prima facie* case on  
28 the alter-ego doctrine, which includes the following requirements: "(1) the corporation must be

1 influenced and governed by the person asserted to be the alter ego; (2) there must be such unity of  
2 interest and ownership that one is inseparable from the other; and (3) the facts must be such that  
3 adherence to the corporate fiction of a separate entity would, under the circumstances, sanction  
4 fraud or promote injustice." *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 601, 747 P.2d 884,  
5 886 (1987); *Williams*, 851 F.3d at 1021 (noting that plaintiff must make out a *prima facie* case on  
6 the alter ego requirements for personal jurisdiction).

7 In assessing these requirements, courts look at whether there has been "co-mingling of  
8 funds, undercapitalization, unauthorized diversion of funds, treatment of corporate assets as the  
9 individual's own, and failure to observe corporate formalities." *Polaris*, 103 Nev. at 601,  
10 747 P.2d at 887. On the contrary, "evidence that the corporation existed as an ongoing enterprise  
11 engaged in legitimate business suggests no fraudulent intent or injustice to support piercing the  
12 corporate veil." *In re W. States Wholesale Nat. Gas Litig.*, 605 F. Supp. 2d 1118, 1133  
13 (D. Nev. 2009).

14 Here, there is no basis to pierce the corporate form of Barrick Gold or any of its  
15 subsidiaries operating in Nevada. Barrick Gold scrupulously maintains a separate accounting for  
16 each of its subsidiaries according to generally accepted accounting principles, none of  
17 Barrick Gold's subsidiaries' funds have been improperly "diverted" to anyone, Barrick Gold does  
18 not treat its subsidiaries' assets as its own, and Barrick Gold and its subsidiaries carefully maintain  
19 all necessary formalities, including separate boards, officers, bank accounts, and corporate  
20 records. (Ex. L, Stringer Decl. ¶11.) See *Bonanza*, 95 Nev. at 467, 596 P.2d at 230 (subsidiary  
21 was not the alter ego of a parent corporation when the two entities maintained separate corporate  
22 books and accounts, held separate directors' meetings, recorded separate minutes with full  
23 corporate formalities, and had independent headquarters).

24 ***Perhaps most importantly, there is no evidence or allegation that any of Barrick Gold's***  
25 ***subsidiaries are undercapitalized, that Barrick Gold has looted the assets of its subsidiaries, or***  
26 ***that recognizing their separate corporate forms will work a fraud or injustice.*** *Bonanza*,  
27 95 Nev. at 467, 596 P.2d at 230; *Viega*, 130 Nev. at 383, 328 P.3d at 1162 (Pickering, J.,  
28 concurring in result) (noting that alter-ego theory did not apply because the parent "did not loot or

1 damage [subsidiary's] solvency"). On the contrary, all of Barrick Gold's subsidiaries are  
2 adequately capitalized for their purposes. (Ex. L, Stringer Decl. ¶ 12.) Bullion's contention that  
3 adherence to presumption of corporate separateness would sanction fraud or promote injustice is  
4 unavailing. The subsidiaries that own the land and the minerals from which Bullion seeks a  
5 royalty are named defendants in this action and, by Bullion's own allegations, they are the only  
6 parties that remotely would be subject to liability.

7 Even if a court determines that one entity is the alter ego of the other, then *the foreign*  
8 *entity's activities in the forum jurisdiction must still meet the general jurisdiction requirements*  
9 *of being essentially "at home."* *Daimler AG v. Bauman*, 571 U.S. 117, 136, 134 S. Ct. 746, 760  
10 ("Even if we were to assume that [the domestic subsidiary] is at home in California, and further to  
11 assume that [its] contacts are imputable to [the foreign parent corporation], there would still be no  
12 basis to subject [the parent] to general jurisdiction in California, for [the parent's] slim contacts  
13 with the State hardly render it at home there."). "With respect to a corporation, the place of  
14 incorporation and principal place of business are paradigm bases for general jurisdiction."  
15 *Daimler*, 571 U.S. at 137 (internal quotations omitted). "Typically, a corporation is 'at home' only  
16 where it is incorporated or has its principal place of business." *Viega*, 130 Nev. at 376-77, 328  
17 P.3d at 1158. "Those affiliations have the virtue of being unique – that is, each ordinarily  
18 indicates only one place – as well as easily ascertainable." *Daimler AG*, 571 U.S. at 137; *see also*  
19 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) ("A court may  
20 assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any  
21 and all claims against them when their affiliations with the State are so 'continuous and  
22 systematic' as to render them essentially at home in the forum State.").

23 Under this strict standard, there is no basis for finding that Barrick Gold is subject to  
24 jurisdiction in Nevada, even under a purported alter-ego theory. Barrick Gold is a corporation  
25 organized under the laws of British Columbia, Canada, with its principal place of business in  
26 Ontario, specifically Toronto. (Stringer Decl., Ex. K ¶¶ 2-3.) It does not have any officers in  
27 Nevada. (*Id.* ¶ 3.) It does not have any employees, offices, equipment, operations, or property in  
28 Nevada; it pays no taxes in Nevada; and it does not conduct any mining, exploration, or similar

activities in Nevada. (*Id.* ¶¶ 12-22.) However characterized, Barrick Gold's contacts with Nevada are not so "continuous and systematic" as to make it "at home" in Nevada such that it is subject general jurisdiction for all purposes.

**2. Bullion's proffered agency theory fails.**

Again, under Nevada law, Barrick Gold and its subsidiaries are *presumed separate*. *Viega*, 130 Nev. at 378, 328 P.3d at 1158. Moreover, it is well established that "the relationship between a parent company and its wholly owned subsidiary necessarily includes some elements of control." *Id.* Accordingly, contrary to Bullion's wishful thinking, "neither ownership nor control of a subsidiary corporation by a foreign parent corporation, without more, subjects the parent to the jurisdiction of the state where the subsidiary does business." *Id.*

In *Viega*, the Nevada Supreme Court explained that when a plaintiff like Bullion claims a Nevada court has jurisdiction over a foreign parent corporation based upon an agency theory related to its subsidiaries, the plaintiff must establish more than that the parent company exerts some control over the subsidiary. *Id.* at 378, 328 P.3d at 1158. Instead, a plaintiff must show that the parent company's control is *so pervasive* that it veers "into management by the exercise of control over the internal affairs of the subsidiary and the determination of how the company will be operated on a day-to-day basis such that the parent has moved beyond the establishment of general policy and direction for the subsidiary and in effect taken over performance of the subsidiary's day-to-day operations in carrying out that policy." *Id.* at 379, 328 P.3d at 1159 (quotations and citations omitted).<sup>8</sup>

<sup>8</sup> In *Daimler AG*, the United States Supreme Court rejected an agency theory of general jurisdiction. *Daimler AG v. Bauman*, 571 U.S. 117, 155-56 (2014). Similarly, the Nevada Supreme Court's decision in *Viega* indicated that an agency theory is only applicable for specific personal jurisdiction. *Viega*, 130 Nev. at 376, 328 P.3d at 1157 ("Subsidiaries' contacts have been imputed to parent companies only under narrow exceptions to this general rule, including "alter ego" theory and, *at least in cases of specific jurisdiction, the "agency" theory.*"). It should be noted, however, that the Ninth Circuit subsequently interpreted the United States Supreme Court decision in *Daimler AG* as having rejected the agency theory for purposes of establishing specific personal jurisdiction. *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1024 (9th Cir. 2017) (indicating that the rationale set for in *Daimler AG* would seem to undermine application of the agency test even in specific jurisdiction cases).

1           After setting forth this exacting standard, the *Viega* court identified the degree of control  
2 that a parent corporation may exercise over its in-state subsidiary without turning that subsidiary  
3 into an "agent" for personal jurisdiction purposes, including requiring "approval from [the parent  
4 corporation] before entering into any large financial transactions," implementing "consolidated  
5 reporting, and shared professional services," requiring the subsidiary to submit "monthly reports  
6 to [the parent corporation] for review by [the parent's] management board," and "supervising the  
7 subsidiary's budget decisions, and setting general policies and procedures." *Id.* at 380, 328 P.3d  
8 at 1160 (collecting cases). Moreover, the court rejected claims, like those asserted in Bullion's  
9 complaint, that the foreign parent company was an agent of its subsidiaries because it referred to  
10 all "of the Viega entities simply as Viega, a unified global enterprise with operations in America,  
11 sharing the same corporate logo." *Id.*

12           Barrick Gold supervises its subsidiaries to the same degree that the *Viega* court found was  
13 insufficient. For example, while Barrick Gold monitors its subsidiaries' performance, supervises  
14 their budget decisions, requires approval for large financial transactions, issues consolidated  
15 corporate and financial reports, and establishes general policies and procedures, it leaves  
16 day-to-day management to its subsidiaries themselves, including over their mining and processing  
17 operations, personnel, and legal affairs. (Ex. L, Stringer Decl. ¶ 9.) Bullion's Second Amended  
18 Complaint offers nothing more than what *Viega* rejected.

19           In *Viega*, the Nevada Supreme Court cited extensively to *Sonora Diamond Corporation, v.*  
20 *Superior Court*, 99 Cal. Rptr. 2d 824, 838 (2000), a case similar to this one. In *Sonora*, a  
21 California school district sued a Nevada corporation ("Sonora") and its Canadian parent  
22 ("Diamond") over a contract by which Sonora, the subsidiary, purchased a gold mine from the  
23 district in exchange for, among other things, annual payments secured by a royalty.

24           The court found that Diamond, the parent corporation, had been formed shortly before the  
25 purchase of the mine "for the purpose of acquiring and developing the" mine. *Id.* at 832.  
26 Although Sonora and Diamond maintained separate boards and officers, the court found that  
27 "[t]here is and has been an overlap of individuals serving as directors and officers of both  
28 companies" and Sonora's board often met at the offices of Diamond in Toronto, Canada. *Id.* The

1 court further noted that Diamond, a publicly traded company, consolidated all of its subsidiaries'  
2 information into its annual reports and failed to distinguish between Diamond and its subsidiaries  
3 concerning their ownership of the mine in question – often suggesting that Diamond owned the  
4 mine directly. *Id.* at 832. Sonora's corporate records were maintained at Diamond's offices in  
5 Toronto. *Id.* at 833. Furthermore, when Sonora sold some property near the mine in exchange for  
6 a promissory note, Sonora assigned the note to Diamond to reduce Sonora's inter-company debt to  
7 Diamond. *Id.* When Sonora needed to borrow money to finance the mining activities, Diamond  
8 guaranteed the loans. *Id.* Sonora was, at times, "dependent on . . . the intercompany loans from  
9 Diamond" to cover operating costs. *Id.*

10 Addressing the agency theory of imputing contacts, the *Sonora* court recognized that  
11 Diamond certainly exercised control over Sonora, but the question was whether such control was  
12 "so pervasive and continual that the subsidiary may be considered nothing more than an agent or  
13 instrumentality of the parent." *Id.* at 838. And, importantly, given the factual allegations here,  
14 the court concluded that "such common characteristics as interlocking directors and officers,  
15 consolidated reporting, and shared professional services" **do not** "trespass the boundaries of  
16 legitimate ownership and control of the subsidiary." *Id.* at 838. As the court noted, "Diamond's  
17 monitoring of Sonora Mining's performance, supervising Sonora Mining's budget decisions, and  
18 setting general policies and procedures to be followed by Sonora Mining" are all "**appropriate,**  
19 **normal involvement by a parent corporation,**" either in isolation or in aggregate. *Id.* at 845  
20 (emphasis added). Similarly, financial transactions between a parent corporation and its  
21 subsidiary, such as start-up capital from the parent and debt payments by the subsidiary, do not  
22 make the parent liable for its subsidiary's contacts where such transactions are "separately  
23 recorded, maintained in the records of each, documented as intercompany loans and similar  
24 arrangements, and dealt with as legitimate obligations." *Id.* at 843.

25 Given that the principal asset was an active gold mine, the *Sonora* court also looked at  
26 which entity – Sonora or Diamond – was responsible for managing the day-to-day operations of  
27 the mine. The court noted that there was "no evidence that Diamond directed or participated in  
28 the methods or means by which Sonora Mining performed th[e mining] function" or of "any

1 direct involvement by Diamond in any 'on the site' operational decisions." *Id.* at 845. The court  
2 observed that even though Diamond employees would occasionally assist Sonora with its mining  
3 activities, those contacts were rare and isolated. *Id.* In short, the court concluded that  
4 notwithstanding Diamond's involvement in the business affairs of its subsidiary, that involvement  
5 did not transgress the boundaries of appropriate oversight and management.

6 Here, Barrick Gold's involvement with its subsidiaries is even more attenuated than  
7 Diamond's. For example, Barrick Gold has been the ultimate parent company of the  
8 Barrick family of companies for decades – it was not formed to acquire and develop any mine in  
9 Nevada (or anywhere else for that matter). Additionally, while Barrick Gold certainly monitors  
10 the financial performance of its subsidiaries, it has not directly provided regular capital infusions  
11 to its Nevada subsidiaries, as Diamond did with Sonora. (Ex. L, Stringer Decl. ¶¶ 9-10.) While  
12 Diamond centralized management and record-keeping functions at its Toronto headquarters, even  
13 for Sonora's board of directors, Barrick Gold has historically had a far less centralized  
14 management structure, allowing its subsidiaries to manage its mining interests in a diffused  
15 regional structure. (*See, e.g.*, Ex. I, Astorga Dep. Tr. 35:15-36:2, 36:18-20; Ex. J, Bolland  
16 Dep. Tr. 13:20-14:5.)

17 Barrick Gold has never directed the mining activities of any of its subsidiaries around the  
18 world, including those operating in Nevada. While Barrick Gold has provided global policies  
19 relating to things like supply-chain management and purchasing, it has never told any of its mines  
20 how to conduct their day-to-day mining operations, much less assumed direct control over them.  
21 (*See, e.g.*, Ex. G, Mansanti Dep. Tr., Dec. 20, 2017, 66:12-20; Ex. H, Measom Dep. Tr.,  
22 March 21, 2018, 11:18-12:13; Ex. I, Astorga Dep. Tr., March 20, 2018, 36:3-17.)

23 But there is more. Even if the Nevada subsidiaries are assumed to be Barrick Gold's  
24 agents (they are not), Bullion has still failed to alleged, and cannot show, that this purported  
25 agency has any nexus to the claims. *Viega*, 130 Nev. at 381, 328 P.3d at 1160 ("And even if, as  
26 the HOA asserts, American Viega is German Viega's agent for American operations and the face  
27 of American marketing, the HOA has not shown that that particular agency has resulted in the  
28 basis for the claims at issue here . . . ."); *Dogra v. Liles*, 129 Nev. 932, 937, 314 P.3d 952, 955



(2013) ("Nevada may exercise specific jurisdiction over a nonresident defendant if the defendant purposefully avails himself or herself of the protections of Nevada's laws, or purposefully directs her conduct towards Nevada, and the *plaintiff's claim actually arises from that purposeful conduct*").

**B. The Applicable Period of Limitation Ran Long Ago as to Bullion's Claims Against Barrick Gold.**

Even if Bullion could overcome the jurisdictional hurdle (it cannot), then any purported direct claims asserted against Barrick Gold should be dismissed because they are barred under the applicable statute of limitations. The Court need look no further than Bullion's operative complaint to confirm its claims against Barrick Gold are time barred. When the defense of the statute of limitations appears from the complaint itself, a motion to dismiss is proper. *Patush v. Las Vegas Bistro, LLC*, 135 Nev. 353, 354, 449 P.3d 467, 469 (2019) ("Where the statute of limitations has run, dismissal is appropriate."); *Kellar v. Snowden*, 87 Nev. 488, 491, 489 P.2d 90, 92 (1971); *In re Amerco Deriv. Litig.*, 127 Nev. 196, 228, 252 P.3d 681, 703 (2011) ("If the allegations contained in the amended complaint demonstrate that the statute of limitations has run, then dismissal upon the pleadings is appropriate.").

In Nevada, the limitations period on "[a]n action upon a contract, obligation or liability founded upon an instrument in writing" is six years. NRS 11.190(1)(b). Similarly, the statute of limitations for Bullion's purported declaratory relief judgment claim premised on the same breach of contract claim is six years. *Bank of New York Mellon v. Ruddell*, 380 F. Supp. 3d 1096, 1100 (D. Nev. 2019) (discussing application of limitations periods to declaratory judgment claims under Nevada law). Moreover, the breach of the covenant of good faith and fair dealing and unjust enrichment are subject to a four-year statute of limitation. NRS 11.190(2)(c); *Schumacher v. State Farm Fire & Cas. Co.*, 467 F. Supp. 2d 1090, 1094-95 (D. Nev. 2006).<sup>9</sup>

<sup>9</sup> Bullion's purported claims for "accounting," "constructive trust" and "alter-ego and corporate veil-piercing" are not independent claims but rather remedies dependent upon the success of one of Bullion's other claims. Because Bullion's claims are barred under the applicable statute of limitations, its remedies similarly fail.

1 For purposes of this motion, and as alleged in Bullion's complaints, the purported  
2 (indirect) claims against Barrick Gold accrued on the date they were previously filed in the  
3 federal action – June 22, 2009. (Sec. Am. Compl. ¶ 33). Yet, after filing these claims against  
4 Barrick Gold in June 2009, Bullion stipulated to dismiss Barrick Gold, and during the next decade  
5 or so failed to enforce these supposed claims or rights. Nothing prevented Bullion (other than its  
6 strategic decision not to do so) from refileing these claims against Barrick Gold within the  
7 applicable statute of limitations. The longest Bullion had under the applicable statute of  
8 limitations to enforce those claims was six years or until June 2015, at the latest. Rather than  
9 timely enforce its rights, Bullion filed its claims against Barrick Gold in this case in late 2018,  
10 nearly three years too late under NRS 11.190. Dismissal is more than warranted here given  
11 Bullion's strategic decision to sit upon its purported claims.

12 **C. Bullion's Complaint Fails to Allege a Viable "Constructive Trust" Remedy.**

13 Putting aside the fact that a constructive trust is a remedy, not a cause of action, Bullion's  
14 claim for "constructive trust" fails to state a claim upon which relief can be granted.  
15 See NRCP 12(b)(5) (dismissal is appropriate if a party fails to state a claim upon which relief can  
16 be granted). When a court considers a motion to dismiss under NRCP 12(b)(5), all alleged *facts*  
17 in the complaint are presumed true and all inferences are drawn in favor of the complaint.  
18 *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227–28, 181 P.3d 670, 672 (2008). Thus,  
19 dismissing a complaint is appropriate when "it appears beyond a doubt that [the plaintiff] could  
20 prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d  
21 at 672.

22 Here, Bullion's purported claim for "constructive trust" relief should be dismissed.  
23 Imposition of a constructive trust in Nevada requires: "(1) [that] a confidential relationship exists  
24 between the parties; (2) retention of legal title by the holder thereof against another would be  
25 inequitable; and (3) the existence of such a trust is essential to the effectuation of justice."  
26 *Waldman v. Maini*, 124 Nev. 1121, 1131, 195 P.3d 850, 857 (2008). Bullion's claim falls flat  
27 from the start.  
28

1 For starters, Bullion's Second Amended Complaint seeks a constructive trust over the  
2 purported "royalties" allegedly due to Bullion under the "1979 Agreement." (See  
3 Sec. Am. Comp., ¶¶ 68-70.) Yet, Nevada law is clear that payments purportedly due from  
4 "defendants" to Bullion are liabilities which "*do[ ] not constitute property that may be subject to*  
5 *a constructive trust.*" *Danning v. Lum's, Inc.*, 86 Nev. 868, 871, 478 P.2d 166, 168 (1970)  
6 (emphasis added).

7 Moreover, Bullion fails to plead any *facts* that would remotely establish a "confidential"  
8 relationship between Bullion and Barrick Gold (or any other defendant). A mere contractual  
9 relationship is insufficient. Instead, a confidential relationship only "exists when one party gains  
10 the confidence of the other and purports to act or advise with the other's interests in mind," like  
11 the relationship between family or an attorney and client. *Perry v. Jordan*, 111 Nev. 943, 947,  
12 900 P.2d 335, 337-38 (1995); *Locken v. Locken*, 98 Nev. 369, 372, 650 P.2d 803, 805 (1982)  
13 (finding a confidential relationship between a son and his father); *Davidson v. Streeter*,  
14 68 Nev. 427, 440, 234 P.2d 793, 799 (1951) (finding confidential relationship between attorney  
15 and client). Other than conclusory allegations of a "special and confidential relationship  
16 exist[ing] between the parties," Bullion fails to allege any facts that would support a confidential  
17 relationship as a matter of law. Bullion's "claim" of constructive trust should be dismissed.

18 **IV. CONCLUSION**

19 Barrick Gold should be dismissed from this action. Bullion's attempt to resurrect claims it  
20 dismissed against Barrick Gold nearly a decade ago fails. Those claims are barred under the  
21 applicable statute of limitations. But, irrespective of this fatal fact, Barrick Gold is not (and never  
22 was) subject to personal jurisdiction in Nevada. The mere fact that Barrick Gold is a foreign parent  
23 company to United States subsidiaries operating in Nevada is legally insufficient under Nevada law.

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1 Bullion named the entities in the corporate chain that own the land and the minerals. Its efforts to  
2 drag every other entity into this action and into Nevada courts must fail.

3 DATED this 28th day of July, 2020.

4 PISANELLI BICE PLLC

5  
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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the law firm of Pisanelli Bice PLLC, and that on the 28th day of July, 2020, I filed a true and correct copy of the foregoing **BARRICK GOLD CORPORATION'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT** with the Clerk of the Court through the Court's CM/ECF system, which sent electronic notification to all registered users as follows:

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