

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,

Respondents,

BULLION MONARCH MINING, INC,

Real Party in Interest.

Case No. 82370

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May 28 2021 02:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**MOTION TO SUPPLEMENT
PETITION AND APPENDIX
THERE TO**

Pursuant to NRAP 27, Petitioner Barrick Gold Corporation ("Barrick Gold") moves to file the attached Supplement to the pending Petition for Writ of Prohibition ("Petition") and related Supplemental Appendix.

On January 25, 2021, Barrick Gold filed the pending Petition challenging the district court's November 19, 2020¹ Order denying Barrick Gold's motion to dismiss Real Party in Interest Bullion Monarch Mining, Inc.'s ("Bullion") Second Amended Complaint ("SAC") for lack of personal jurisdiction that found the Canadian-based parent company subject to specific personal jurisdiction in Nevada. On February 8, 2021, while the Petition remained pending, Bullion filed a Third Amended Complaint ("TAC") in the district court. Two days later, Bullion filed a motion in

¹ Notice of Entry of the Order was entered on December 9, 2020.

this Court seeking to dismiss the Petition based on purported mootness grounds because of its TAC. Barrick Gold opposed and filed a countermotion to stay pending a decision on the Petition.

While the Petition and the related motions remained pending in this Court, Barrick Gold, out of an abundance of caution, renewed and again filed a motion to dismiss Bullion's TAC for lack of personal jurisdiction in the district court. Because Bullion's TAC changed nothing as it relates to Barrick Gold's lack of contact with Nevada sufficient for personal jurisdiction, the briefing in the district court was substantively the same as before. On April 21, 2021, the district court entered its order denying Barrick Gold's motion to dismiss Bullion's TAC for reasons consistent with the district court's order denying Barrick Gold's motion to dismiss Bullion's SAC. In other words, the district court's jurisdictional ruling remained the same. Thus, the arguments and issues raised in Barrick Gold's Petition apply equally to the district court's April 21, 2021 order.

Barrick Gold does not need to file an entirely new petition. The district court substantively adopted the same jurisdictional ruling already at issue in this proceeding. The Supplement to the Petition is tailored to make it clear that Barrick Gold's Petition applies equally to the district court's most recent order as well as addressing Bullion's single new fraudulent transfer cause of action in the TAC. Specifically, this claim does not save the district court's erroneous specific

personal jurisdictional holding against Barrick Gold. Similarly, the Supplemental Appendix is limited in focus, including only Bullion's TAC, the underlying briefing, and the district court's April 21, 2021 order.

Accordingly, to preserve judicial resources and proceed in the most efficient fashion, Barrick Gold requests that the Court permit it to file a Supplement to the Petition, attached as Exhibit 1, along with a corresponding Supplemental Appendix, attached as Exhibit 2.

DATED this 28th day of May, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Pisanelli Bice PLLC, and that on the 28th day of May, 2021, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **MOTION TO SUPPLEMENT PETITION AND APPENDIX THERETO** to:

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EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 82370

BARRICK GOLD CORPORATION,

Petitioner,

v.

**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,**

Respondents,

and

BULLION MONARCH MINING, INC.,

Real Party in Interest.

SUPPLEMENT TO PETITION FOR WRIT OF PROHIBITION

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I. SUPPLEMENT OF RELEVANT FACTS

On January 25, 2021, Barrick Gold Corporation ("Barrick Gold") filed the pending Petition for Writ of Prohibition ("Petition") against the district court's December 9, 2020 Order (the "Order")¹ denying Barrick Gold's motion to dismiss for lack of personal jurisdiction pursuant to NRCP 12(b)(2) directed at Real Party in Interest Bullion Monarch Mining, Inc.'s ("Bullion") Second Amended Complaint ("SAC"). Petitioner's Appendix (PA) 1250-1259. The district court ultimately concluded that Barrick Gold, a Canadian-based parent company, was directly subject to specific personal jurisdiction in Nevada as result of an unrelated 2019 corporate transaction in which Barrick Gold's indirect subsidiaries' then-assets were contributed to a new joint venture subsidiary. *Id.*

While the Petition remained pending, Bullion filed a Third Amended Complaint ("TAC") in the district court. 1 Petitioner's Supplemental Appendix ("PSA") 1-51. The TAC includes substantively the same five causes of action that arise from an agreement executed by non-parties in 1979 (the "1979 Agreement") under which Bullion contends it is owed a royalty on mineral production from certain properties owned and mined by Barrick Gold's indirect subsidiaries in Nevada. *Id.* Similarly, with few deviations, the TAC rearranges the same allegations previously included in Bullion's purported claims for "constructive trust" and

¹ The district court's order was filed on November 19, 2020.

"alter ego and corporate veil-piercing." *Id.* Lastly, the TAC includes a fraudulent conveyance claim that is not levied – nor could it be – against Barrick Gold. *Id.* at 17-18.

Two days after filing the TAC in the district court, Bullion filed a motion in this Court seeking to dismiss the Petition based on purported mootness grounds because of its TAC. Out of an abundance of caution, Barrick Gold renewed and filed again a motion to dismiss for lack of personal jurisdiction pursuant to NRCPP 12(b)(2) in the district court directed at the TAC. 2 PSA 52-160. Because Bullion's TAC changed nothing as it relates to Barrick Gold's lack of contact with Nevada sufficient for personal jurisdiction, the briefing in the district court was substantively the same as before. *See id.*; *see also id.* at 161-68 (citing to Bullion's opposition); *id.* at 169-75 (citing to Barrick Gold's reply).

On April 21, 2021, the district court entered its order denying Barrick Gold's motion to dismiss Bullion's TAC for lack of personal jurisdiction consistent with its prior order denying Barrick Gold's motion to dismiss for lack of personal jurisdiction directed at Bullion's Second Amended Complaint (“SAC”). 2 PSA 176-81. The district court order remained substantively the same, adopting and incorporating the same flawed jurisdictional hook Barrick Gold challenged in the pending Writ:

1. Consistent with the Court's November 19, 2020 order, Barrick Gold has purposefully availed itself of jurisdiction in Nevada.

2. Bullion's claims arise in part from the agreements referenced in the Court's November 19, 2020 order to which Bullion is a beneficiary.

3. The forum-selection clause in the joint venture agreement shows that it is not unreasonable for the Court to exercise its jurisdiction in this case.

Id. at 179.

II. SUPPLEMENTAL DISCUSSION

The district court's ruling on the TAC substantively adopted the same erroneous jurisdictional decision already at issue in this proceeding related to the SAC. Thus, the arguments and issues raised in Barrick Gold's Petition apply equally to the district court's April 21, 2021 order. Nonetheless, in motion practice before the district court, Bullion contended that the TAC's "new fraudulent-conveyance claim bolsters" jurisdiction against Barrick Gold. 2 PSA 170 (emphasis removed). However, Bullion's "new fraudulent-conveyance claim" does not and cannot support jurisdiction against Barrick Gold.

The very language of Bullion's TAC makes it clear that its fraudulent conveyance claim is not directed at Barrick Gold. *See* 1 PSA 17 ("Goldstrike, Exploration, and other entities . . . transferred property . . ."); *id.* at 18 ("Such transfer of property from Goldstrike, Exploration, and other entities . . . to Nevada Gold Mines, LLC"). Bullion does not allege – nor could it – that Barrick Gold was either the transferee or the transferor of any real property. Instead, Bullion alleges "the

transfers were from entities owned or controlled by Barrick Gold." 2 PSA 166 (internal quotation marks omitted). Yet, such a theory is legally insufficient to support a finding of direct specific personal jurisdiction against Barrick Gold.

The law in Nevada is well-settled. "Nevada law does not recognize [fraudulent transfer] claims against nontransferees under theories of accessory liability." *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015). As the *Cadle* Court explained, "fraudulent transfer claims are traditionally claims for equitable relief" and thus "it makes little sense to impose an equitable remedy against someone who never had possession of the property." *Id.* at 118, 345 P. 3d at 1052-53. Bullion makes no allegation in the TAC that Barrick Gold ever had legal possession of the mineral properties transferred to the new subsidiary – Nevada Gold Mines, LLC ("NGM") – and presented no evidence to the district court that would even support such an allegation.

Moreover, any argument that because Barrick Gold is the ultimate parent company of the indirect subsidiaries alleged to be the transferee or the transferors, and thus Barrick Gold somehow "owned or controlled" these entities is sufficient for a finding of personal jurisdiction is without merit. Bullion failed to make any showing that Barrick Gold is the alter ego or agent of these indirect subsidiaries, and the district court made no finding that Barrick Gold was subject to personal jurisdiction under either one of these theories. Indeed, the district court determined

that Barrick Gold was directly subject to specific personal jurisdiction; not that it was indirectly subject to personal jurisdiction through its subsidiaries' contacts in Nevada.

Under the law, "corporate entities are presumed separate and thus, the mere existence of a relationship between a parent company and its subsidiaries is not sufficient to establish personal jurisdiction over the parent on the basis of the subsidiaries' minimum contacts with the forum." *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 375, 328 P.3d 1152, 1157 (2014) (quotations and citations omitted). "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." *Id.* Bullion cannot circumvent the two narrow exceptions this Court espoused in *Viega* through bootstrapping Barrick Gold to a fraudulent conveyance claim directed at its indirect subsidiaries.

The district court's April 21, 2021 order is premised on the same flawed jurisdictional ruling at issue in the pending Petition. Bullion's fraudulent conveyance claim contained in the TAC does not save the district court's invalid exercise of jurisdiction over Barrick Gold.

III. CONCLUSION

For all of the foregoing reasons, Barrick Gold respectfully requests that this Court grant the requested writ of mandamus and compel the district court to vacate both of its erroneous jurisdictional orders and dismiss Barrick Gold for lack of personal jurisdiction.

DATED this 28th day of May, 2021.

PISANELLI BICE PLLC

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VERIFICATION

I, Debra L. Spinelli, Esq., declare as follows:

1. I am counsel for the Petitioner Barrick Gold Corporation.
2. I verify that I have read and compared the foregoing SUPPLEMENT TO PETITION FOR WRIT OF PROHIBITION and that the same is true to my own knowledge, except for those matters stated on information and belief, and as those matters, I believe them to be true.
3. I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

This declaration is executed on 28th day of May, 2021 in Las Vegas, Nevada.

/s/ Debra L. Spinelli
DEBRA L. SPINELLI, ESQ.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office Word 2013 in size 14 font in double-spaced Times New Roman.

I certify that I have read this brief and that it complies with the page or type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted, it is proportionately spaced, has a typeface of 14 points or more and 1,151 words.

I further certify that, to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires that every assertion in this brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Finally, I certify that the Appendix accompanying this brief complies with NRAP 21(a)(4) and NRAP 30 in that the Appendix includes a copy of the District Court's order that is challenged, the pertinent parts of the record before the respondent judge, and other original documents essential to understand the matter set forth in this Petition.

DATED this 28th day of May, 2021.

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I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 28th day of May, 2021, I electronically filed and served in the manner indicated below a true and correct copy of the above and foregoing **SUPPLEMENT TO PETITION FOR WRIT OF PROHIBITION** properly addressed to the following:

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Las Vegas, NV 89155

/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRICK GOLD CORPORATION,

Case No. 82370

Petitioner,

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DEPT. XI,

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

Respondent,

VOLUME I OF II

and

BULLION MONARCH
MINING, INC.,

Real Party in Interest.

DATED this 28th day of May, 2021.

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Reply in Support of Barrick Gold Corporation's Motion to Dismiss Plaintiff's Third Amended Complaint	03/22/2021	II	169-175
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An employee of PISANELLI BICE PLLC

**SUBMITTED
UNDER
SEAL
PURSUANT
TO
CONFIDENTIALITY
ORDER**

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Case No. 82370

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DATED this 28th day of May, 2021.

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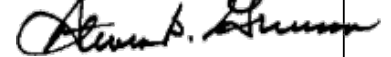
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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
THIRD AMENDED COMPLAINT**

The Court has already ruled that Barrick Gold Corporation ("Barrick Gold") is subject to specific personal jurisdiction in this case. Barrick Gold respectfully maintains that the Court's ruling was in error and promptly filed a petition for writ of prohibition with the Nevada Supreme

1 Court. Nonetheless, Bullion Monarch Mining, Inc. ("Bullion") has now insinuated that this
2 Court's prior ruling is somehow moot and inoperable because it filed a Third Amended Complaint
3 in this action. Although Barrick Gold believes the Nevada Supreme Court is likely to reject
4 Bullion's efforts, out of an abundance of caution, Barrick Gold moves again and renews its
5 motion to dismiss for lack of personal jurisdiction. While the Court is likely not inclined to
6 change the substantive basis for its ruling and since Bullion lent the invitation, the Court should
7 find that Barrick Gold is not subject to personal jurisdiction.

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

10 DATED this 22nd day of February, 2021.

11 PISANELLI BICE PLLC

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Because the parties have briefed this issue multiple times, Barrick Gold will attempt to spare the Court from the redundancies of the duplicative briefing Bullion now insists is necessary.¹ As a refresher, Bullion has long insisted that its royalty claims arise from an agreement executed in 1979 (the "1979 Agreement"), which it asserts runs with land and thus, anyone who acquires the Subject Property becomes bound by the 1979 Agreement and the purported obligation to pay royalties on mineral production not only on the Subject Property but also on a very large designated area covering over two hundred and fifty-five square miles (the "Area of Interest" or "AOI").² For over a decade, Bullion has been litigating these claims against Barrick Gold subsidiaries that actually own the land from which the mineral production occurs.

Barrick Gold will never be a proper party subject to jurisdiction in this case. 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. This was true a decade ago, and it is true to this day. Nonetheless, in December 2020, after extensive briefing and hearing, the Court entered an order finding Barrick Gold directly subject to specific personal jurisdiction as result of a 2019 corporate transaction in which Barrick Gold's indirect subsidiaries' then-assets were contributed to a new joint venture subsidiary. Barrick Gold respectfully maintains that the Court's ruling was in error and has promptly filed a petition for writ of prohibition with the Nevada Supreme Court.

Yet, in a recent filing with the Nevada Supreme Court, Bullion has taken the position that Barrick Gold's petition, and thus by operation, the Court's jurisdictional ruling, is moot as a result of Bullion's recent filing of a Third Amended Complaint. Bullion's position is rather remarkable as it is the party who advocated for and received a favorable ruling from this Court. Since Bullion claims that this Court is no longer tied to its prior determination, Barrick Gold refiles and renews

¹ Barrick Gold incorporates by reference all prior briefing and arguments made in connection with this issue. The arguments previously presented equally apply to Bullion's third amended complaint.

² The Subject Property and the Area of Interest are both described in the 1979 Agreement.

its request for dismissal. Barrick Gold is not subject to jurisdiction in Nevada. This Court should find accordingly.

II. STATEMENT OF FACTS

A. Bullion Stipulates to Dismiss Barrick Gold from the Federal Action.

Bullion's tortured attempts to drag Barrick Gold into Nevada for the claims presented has already been detailed for the Court. (*See* Barrick Gold's Mot. to Dismiss, on file, Oct. 11, 2019; Barrick Gold's Mot. to Dismiss, on file, July 28, 2020). These efforts date back nearly a decade. Specifically, in June 2009, Bullion amended its complaint in the federal court action filed against Newmont USA Limited to name Barrick Gold and Barrick Goldstrike Mines Inc. ("Goldstrike") as defendants. (*See* Appx. to Barrick Gold's Mot. to Dismiss, on file, July 28, 2020, Ex. A, 1-41.)

In response, Barrick Gold immediately moved to dismiss for lack of personal jurisdiction. (*See* Appx. to Barrick Gold's Mot. to Dismiss, on file, July 28, 2020, Ex. B, 42-60). Barrick Gold's motion established through supporting evidence that Barrick Gold had no presence in Nevada, had no contacts with Nevada, Barrick Gold and its subsidiaries observed all corporate formalities and properly maintained their separate corporate existence, and therefore Barrick Gold was not subject to jurisdiction in Nevada. (*See* Appx. to Barrick Gold's Mot. to Dismiss, on file, July 28, 2020, Ex. C, 61-64).

From the very beginning, Barrick Gold has been nothing but forthcoming to Bullion concerning Barrick Gold and its subsidiaries' structure. Indeed, as Barrick Gold informed Bullion back in 2009, Goldstrike is a wholly-owned subsidiary of Barrick Gold Exploration Inc. ("Exploration"). Exploration, in turn, is a wholly-owned subsidiary of ABX Financero Inc. ("ABX"), and ABX is a wholly-owned subsidiary of Barrick Gold. (*Id.*)³ Yet, as the evidence submitted in support of Barrick Gold's motion to dismiss in the federal action established, Barrick Gold and its subsidiaries observed all corporate formalities and properly maintained their

³ As the Court will recall, Bullion initially named ABX here, *only to dismiss ABX after wasting significant time and resources in jurisdictional discovery to uncover what was 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.

1 separate corporate existence. (*Id.*) Instead of contesting any of these facts or making any sort of
2 assertion that Barrick Gold was subject to jurisdiction, Bullion voluntarily dismissed
3 Barrick Gold. (*See* Appx. to Barrick Gold's Mot. to Dismiss, on file, July 28, 2020,
4 Ex. D, 65-67.)

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

8 Confirming as much, after dismissing Barrick Gold, Bullion decided to proceed solely
9 against Goldstrike (the then-owner of the land and mineral rights). During the federal case – as
10 part of the subject-matter jurisdiction issue that later arose in that action – Bullion conducted
11 wide-ranging jurisdictional discovery.⁴ And, Bullion subsequently used that jurisdictional
12 discovery to suggest that Barrick Gold improperly controlled the activities of its subsidiaries,
13 effectively making its subsidiary's headquarters "Toronto, Canada – the headquarters of [their]
14 ultimate corporate parent." (*See* Appx. to Barrick Gold's Mot. to Dismiss, on file, July 28, 2020,
15 Ex. E, 68-77.) Of course, had Bullion established that Barrick Gold's Toronto headquarters
16 controlled the activities of Goldstrike, Bullion could have maintained the case in federal court.
17 But the federal court rejected Bullion's contention, finding that the "unrebutted evidence tends to
18 show that [Goldstrike's] executives in Salt Lake City – not Toronto – directed and controlled
19 [Goldstrike's] activities." (*Id.*)⁵

20 The jurisdictional discovery in federal court conclusively established that Barrick Gold
21 respects its subsidiaries' separate corporate existence and does not improperly control them. For
22 example, the former general manager of the Goldstrike mine in Nevada, John Mansanti, testified

23 ⁴ As the Nevada Supreme Court has made clear, if a party had the benefit of discovery from
24 a prior litigation before filing the complaint and still fails to allege facts indicating the court might
25 have jurisdiction, then jurisdictional discovery is properly denied. *Tricarichi v. Coop.*
26 *Rabobank, U.A.*, 135 Nev. 87, 98, 440 P.3d 645, 654 (2019) (finding that the district court did not
27 abuse its discretion in denying jurisdictional discovery because the plaintiff had the benefit of
28 discovery from a prior proceeding and still failed to allege facts indicating the court might have
jurisdiction).

⁵ Bullion appealed this decision to the Ninth Circuit. Yet, after the matter was fully briefed,
Bullion voluntarily dismissed the appeal and any challenge to the federal court's ruling, preferring
instead the new forum of Nevada state courts. (*See* Appx. to Barrick Gold's Mot. to Dismiss, on
file, July 28, 2020, Ex. F, 78-79.)

1 that management in Toronto "very rarely" directs activities across its subsidiaries. The directives
2 that originate at Barrick Gold usually relate to improving efficiency, such as centralizing the
3 purchase of truck tires, or standardizing practices, such as supply-chain management. (*See Appx.*
4 *to Barrick Gold's Mot. to Dismiss*, on file, July 28, 2020, Ex. G, Mansanti Dep. Tr., Dec. 20,
5 2017, 66:12–20; Ex. H, Measom Dep. Tr., March 21, 2018, 11:18-12:13; Ex. I, Astorga Dep. Tr.,
6 March 20, 2018, 36:3-17.) As an example, Barrick Gold has standard processes and policies for
7 tracking and reporting "non-routine spending and capital management." (*See Appx. to*
8 *Barrick Gold's Mot. to Dismiss*, on file, July 28, 2020, Ex. J, Bolland Dep. Tr., March 21, 2018,
9 51:25-52:5.) However, these policies are communicated to Barrick Gold's subsidiaries through
10 regional management. (*See Appx. to Barrick Gold's Mot. to Dismiss*, on file, July 28, 2020, Ex. I,
11 *Astorga Dep. Tr. 35:15-36:2, 36:18-20; Ex. J, Bolland Dep. Tr. 13:20-14:5.*)

12 Mr. Mansanti, Goldstrike's former general manager, estimated that Barrick Gold of
13 North America Inc.'s ("Barrick North America") Salt Lake City-based management controlled
14 corporate decisions for Goldstrike "98, 99 percent of the time." (*See Appx. to Barrick Gold's*
15 *Mot. to Dismiss*, on file, July 28, 2020, Ex. G, Mansanti Dep. Tr. 67:1-10.) Barrick Gold was not
16 involved in setting the budgets for Barrick North America or for Goldstrike, and Barrick Gold
17 never overruled Barrick North America's budget decisions, including its budgeting for Goldstrike.
18 (*See Appx. to Barrick Gold's Mot. to Dismiss*, on file, July 28, 2020, Ex. H,
19 *Measom Dep. Tr. 22:13-25, 44:16-45:11.*) Barrick North America was "much more" involved in
20 setting Goldstrike's budget than Barrick Gold was, and none of Barrick North America's operating
21 capital came from Barrick Gold. (*Id.* at 46:4-8, 47:25-48:2.)

22 Barrick North America's Director of Technical Services, Andy Bolland, and its
23 Contract Supervisor, Tony Astorga, both testified that they never communicated with
24 Barrick Gold personnel as part of their jobs. (*See Appx. to Barrick Gold's Mot. to Dismiss*, on
25 file, July 28, 2020, Ex. J, Bolland Dep. Tr. 17:9–11; Ex. I, Astorga Dep. Tr. 35:9-14.) Likewise,
26 Barrick North America's former CFO, Blake Measom, testified that he had no reporting
27 relationship to Barrick Gold. (*See Appx. to Barrick Gold's Mot. to Dismiss*, on file, July 28,
28 2020, Ex. H, Measom Dep. Tr. 12:12-14.) Goldstrike's former general manager testified that

1 during regular conference calls with the other managers of Barrick's North American mines and
2 regional management in Salt Lake City, no one from Barrick Gold participated. (*See* Appx. to
3 Barrick Gold's Mot. to Dismiss, on file, July 28, 2020, Ex. G, Mansanti Dep. Tr. 16:12-17:15.) In
4 response to the direct question of whether Barrick Gold had more "oversight and control" over its
5 North American subsidiaries than Barrick North America had over them, Mr. Bolland testified
6 "definitely not." (*See* Appx. to Barrick Gold's Mot. to Dismiss, on file, July 28, 2020, Ex. J,
7 Bolland Dep. Tr. 60:10-19.)

8 In short, the mandate from Barrick Gold to its United States subsidiaries was clear in that
9 they would operate as their own "business" and "make the decisions as to how that business is
10 operated" on "[v]irtually everything," including decisions relating to the deployment of "capital,"
11 "personnel," and "production," all the way to "creating budgets" and "reporting." (*See* Appx. to
12 Barrick Gold's Mot. to Dismiss, on file, July 28, 2020, Ex. H, Measom Dep. Tr. 12:4-11.)

13 **C. Barrick Gold Remains the Ultimate Foreign Parent Company.**

14 Barrick Gold is a Canadian corporation headquartered in Toronto. (*See* Appx. to
15 Barrick Gold's Mot. to Dismiss, on file, July 28, 2020, Exs. K-L, 149-155.) Barrick Gold is the
16 ultimate parent company of a worldwide group of separate subsidiaries, and it remains without
17 any contacts in Nevada except through those subsidiaries. None of Barrick Gold's officers live in
18 Nevada, with the majority (all but one) living in Toronto. Barrick Gold's Board of Directors holds
19 its meetings mostly, if not exclusively, in Toronto, and Barrick Gold's corporate records are
20 maintained there. (*Id.*)

21 Barrick Gold does not itself own any properties or mines, and it does not itself engage or
22 operate mines or engage in processing activities in Nevada or anywhere else within the
23 United States. (*Id.*) Because Barrick Gold itself does not conduct business in Nevada,
24 Barrick Gold is not (and never has been) registered to do business as a foreign corporation in
25 Nevada. (*Id.*) Consistent with this fact, Barrick Gold does not have any employees, offices,
26 telephone listings, or any bank accounts in Nevada, and it does not pay any Nevada taxes directly.
27 (*Id.*)

28

1 Rather, Barrick Gold's contact with and presence in Nevada is through a lengthy chain of
2 separately incorporated U.S. subsidiaries with their own corporate existence. (*Id.*) When Bullion
3 filed this lawsuit and up until July 2019, the mines and properties that Bullion alleged were
4 subject to its royalty claims were owned by Goldstrike and Exploration. (*Id.*)

5 Like all parent companies, Barrick Gold exerts some degree of supervision over its
6 subsidiaries. (*Id.*) Yet, Barrick Gold's involvement does not transgress the boundaries of
7 appropriate oversight typically involved in a parent-subsidary relationship. (*Id.*) Barrick Gold
8 has, for example, never directed the mining operations or processing activities of any of its
9 indirect subsidiaries operating in Nevada. (*Id.*) Instead, day-to-day management of the various
10 mining operations in Nevada is the responsibility of Barrick Gold subsidiaries that historically
11 were in turn managed through a regional structure. (*Id.*) Barrick Gold's involvement is that of a
12 typical parent corporation, including setting general policy and direction for its subsidiaries,
13 monitoring their performance, supervising their budget decisions, requiring approval for large
14 financial transactions and decisions, and issuing consolidated corporate and financial reports. (*Id.*)

15 Consistent with its role as the parent to indirect subsidiaries operating in Nevada,
16 Barrick Gold obviously would have some involvement in the early-2019 decision to combine its
17 subsidiaries' mining assets and operations in Nevada with those of a competitor,
18 Newmont Goldcorp Corporation ("Newmont"), to form a new joint venture company.
19 Specifically, on March 10, 2019, Barrick Gold and Newmont entered into an
20 Implementation Agreement that caused and governed their respective subsidiaries' contribution
21 and combination of their mining assets and operations in Nevada in the new joint venture. (*See*
22 Appx. to Barrick Holding's Mot. to Dismiss, on file, Aug. 6, 2020, Ex. E.)

23 On July 1, 2019, the transaction closed establishing Nevada Gold Mines, LLC ("NGM"), a
24 Delaware limited liability company, with a massive mining operation comprising eight mines,
25 along with their associated infrastructure and processing facilities in Nevada. (*See* Appx. to
26 Barrick Holding's Mot. to Dismiss, on file, Aug. 6, 2020, Ex. F.) All assets and liabilities part of
27 the transaction were contributed to and assumed by NGM. (*Id.*) Thus, as it stands today, NGM is
28 the entity that owns the vast land and mineral rights and operates the mines in Nevada from which

1 Bullion claims it is owed an AOI royalty stemming from the 1979 Agreement. (*See* Appx. to
2 Barrick Holding's Mot. to Dismiss, on file, Aug. 6, 2020, Exs. E-G) As such, NGM assumed
3 liability (if any) that may stem from Bullion's AOI royalty claims related to the 1979 Agreement.
4 (*Id.*)

5 NGM is owned by Barrick Nevada Holding LLC ("Barrick Holding") and Newmont USA
6 Limited. (*See* Appx. to Barrick Holding's Mot. to Dismiss, on file, Aug. 6, 2020, Ex. G.)
7 Barrick Holding, a Delaware limited liability company, maintains a 61.5% membership interest in
8 NGM. (*Id.*) In turn, various Barrick Gold's U.S. subsidiaries, including Goldstrike and
9 Exploration, received a membership interest in Barrick Holding for the conveyance of their
10 respective assets. (*Id.*) Barrick Gold remains the ultimate parent company of these indirect
11 subsidiaries but owns no direct membership interest in NGM or Barrick Holding, and still does
12 not operate any mines or own any property in Nevada. (*See* Appx. to Barrick Gold's Mot. to
13 Dismiss, on file, July 28, 2020, Exs. K-L, 149-155.) All entities remain separate and independent,
14 with their own corporate existence. (*Id.*)

15 **D. Bullion's Continuous Quest to Manufacture a Basis to Improperly Bring**
16 **Barrick Gold into this Action.**

17 **I. *Barrick Gold moves to dismiss; Bullion seeks leave to amend.***

18 Following the dismissal of its federal cases, Bullion commenced the current action in this
19 Court in December 2018. (*See* Bullion's Compl., on file, Dec. 18, 2020.) Bullion's complaint
20 asserted the same five claims it asserted in the federal case. Remarkably, despite voluntarily
21 dismissing Barrick Gold long ago, Bullion's complaint sought to once again bring Barrick Gold
22 into the mix.

23 Bullion's complaint also named Exploration and ABX as defendants. As the Court knows,
24 ABX moved to dismiss for lack of personal jurisdiction, and the Court granted Bullion's request
25 to conduct jurisdictional discovery. (*See* Minute Order, on file, Apr. 22, 2019.) After wasting
26 significant time and energy, the jurisdictional discovery confirmed that ABX was merely an entity
27 in the Barrick corporate family chain with no relation to the asserted royalty claims, and Bullion
28

1 abandoned ABX as a defendant. Ironically, Barrick Gold is even further removed from Bullion's
2 royalty claims.

3 In any event, the substantive and jurisdictional basis for naming Barrick Gold remained
4 deficient. The only specific allegations in the complaint about Barrick Gold were:
5 (1) Barrick Gold "is an Ontario corporation doing business in Nevada at all times relevant
6 hereto," and (2) "Barrick Gold is – and at all relevant times was – the 100% owner of ABX." (*See*
7 Bullion's Compl., on file, Dec. 18, 2020.) After Bullion belatedly effectuated service, Barrick
8 Gold moved to dismiss for lack of personal jurisdiction in October 2019. (*See* Barrick Gold's Mot.
9 to Dismiss, on file, Oct. 11, 2019.) Barrick Gold's motion established that Barrick Gold still had
10 no contacts in Nevada sufficient to confer personal jurisdiction. (*Id.*) In response, Bullion
11 confessed that Barrick Gold itself has no contacts with Nevada (a fact it knows from the
12 jurisdictional discovery it already conducted) but now insisted that Barrick Gold was subject to
13 jurisdiction in Nevada through its subsidiaries' contacts under either an alter ego or agency theory.
14 (*See* Bullion's Opp'n., on file, Nov. 12, 2019.) The problem for Bullion at the time was its
15 complaint failed to allege a single fact to support these newly-manufactured contentions.

16 Acknowledging its defective pleading, Bullion sought leave to (again) amend its
17 complaint to include new allegations to support supposed claims for "constructive trust," and
18 "alter ego and corporate veil-piercing," and NGM as a defendant. (*See* Bullion's Mot. for Leave,
19 on file, Nov. 2, 2019.) In its briefing, Bullion framed the transaction and formation of NGM as
20 support for jurisdiction over Barrick Gold under an agency or alter ego theory; not that
21 Barrick Gold was supposedly now directly subject to specific personal jurisdiction in Nevada.
22 (*Id.*) Noting Nevada's liberal policy permitting amendments, the Court granted Bullion's request
23 to file its proposed amended complaint. (*See* Order, on file, May 21, 2020.)

24 After filing its amended complaint on June 29, 2020, Bullion sought leave to amend again,
25 to add Barrick Holding – the holding company whose sole purpose is to hold a membership
26 interest in NGM – as a defendant. (*See* Order, on file, July 15, 2020.) The Court again granted
27 Bullion leave to amend on July 14, 2020. (*Id.*)

1 **2. *The Court's jurisdictional ruling.***

2 After the Court granted Bullion's successive motions for leave to amend, Bullion finally
3 filed its second amended (and then-operative) complaint on July 14, 2020. (*See* Bullion's Second
4 Amended Complaint, on file, July 14, 2020.) Barrick Gold again moved to dismiss for lack of
5 personal jurisdiction. (*See* Barrick Gold's Mot. to Dismiss, on file, July 28, 2020.)

6 In response, Bullion suggested for the first time that Barrick Gold was directly subject to
7 specific personal jurisdiction in Nevada because of the transaction and formation of NGM. (*See*
8 Bullion's Combined Opp'n., on file, Aug. 21, 2020.) Barrick Gold's reply pointed out the many
9 errors with Bullion's contention, including the fact that Bullion's royalty claims in no way arise
10 from this 2019 transaction, as confirmed by the fact that Bullion named Barrick Gold as a
11 defendant nearly a decade ago, and again in December 2018, for these very same claims relating
12 to the 1979 Agreement. (*See* Barrick Gold's Reply, on file, Sept. 8, 2020.)

13 After conducting a hearing on Barrick Gold's motion to dismiss as well as other pending
14 motions to dismiss, the Court issued its decision on all pending motions to dismiss. (*See* Order re
15 Motions to Dismiss, on file, Dec. 9, 2020.) The Court denied Barrick Gold's motion to dismiss
16 finding that Barrick Gold was subject to specific personal jurisdiction in Nevada as a result of the
17 transaction and formation of NGM in 2019. (*Id.*) In addition, the Court ordered Bullion to amend
18 its pleading to remove its "claims" for "constructive trust" and "alter ego and corporate
19 veil-piercing" and reorganize them as allegations that meet the particularity requirements of
20 NRCp 9(b). (*Id.*)

21 **3. *Barrick Gold files a writ petition, while Bullion files a third amended***
22 ***complaint and asserts the Court's prior ruling is moot.***

23 On January 25, 2021, Barrick Gold promptly filed a writ of prohibition challenging the
24 Court's denial of the motion to dismiss for lack of personal jurisdiction pursuant to
25 NRCp 12(b)(2), Case No. 82370. On February 8, 2021, Bullion filed its Third Amended
26 Complaint in this action. (*See* Bullion's Third Amended Complaint ("TAC"), on file, Feb. 8,
27 2021.) The TAC includes substantively the same five claims that arise from the 1979 Agreement.
28 (*Id.*) Similarly, with few deviations, the TAC rearranges the same allegations that had previously

1 been included in Bullion's purported claims for "constructive trust" and "alter ego and corporate
2 veil-piercing." (*Id.*) Lastly, the TAC includes a meritless fraudulent transfer claim that is not even
3 levied – nor could it be – against Barrick Gold. (*Id.*)

4 A few days after filing the TAC, Bullion filed a motion to dismiss Barrick Gold's Petition
5 with the Nevada Supreme Court. Bullion insisted that Barrick Gold's Petition and thus, in turn, the
6 Court's prior jurisdictional ruling, was moot by the filing of the TAC. (*See* Ex. A, Bullion's Mot.
7 to Dismiss.) Although Barrick Gold disputes this notion and has filed an opposition to Bullion's
8 attempts to have the Nevada Supreme Court delay or avoid reviewing the Court's jurisdictional
9 ruling, out of an abundance of caution, Barrick Gold renews and seeks once again dismissal for
10 lack of personal jurisdiction. (*See* Ex. B, Barrick Gold's Opp'n.)

11 Bullion's TAC does not add anything from a jurisdictional perspective that this Court has
12 not already considered. The undisputed evidence previously submitted (and incorporated here)
13 unquestionably demonstrates that Barrick Gold is not directly or indirectly subject to personal
14 jurisdiction here. The only real change in Bullion's TAC is in the inclusion of a "fraudulent
15 conveyance" claim. Although this claim is, quite frankly, frivolous and without any legal merit
16 whatsoever, from a jurisdictional analysis as it pertains to Barrick Gold it changes nothing. There
17 still remains no reason for Barrick Gold to be a party to this action. Bullion seeks a royalty on
18 gold from Nevada. The subsidiaries that own that gold are in Nevada, and have been named in
19 this case.

20 **III. ARGUMENT**

21 **A. Barrick Gold Is Not Directly Subject to Personal Jurisdiction in Nevada.**

22 Bullion bears the burden of making a *prima facie* showing of personal jurisdiction over
23 Barrick Gold by "competent evidence of essential facts" that, if true, would support jurisdiction.
24 *Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 692, 857 P.2d 740, 743 (1993). "[F]or personal
25 jurisdiction purposes, a court may not assume the truth of allegations in a pleading which are
26 contradicted by affidavit." *In re W. States Wholesale Nat. Gas Litig.*, 605 F. Supp. 2d 1118, 1130
27 (D. Nev. 2009) (citation omitted). "Jurisdiction over a nonresident defendant is proper **only if** the
28 plaintiff shows that the exercise of jurisdiction satisfies the requirements of Nevada's long-arm

1 statute and does not offend principles of due process." *Viega GmbH v. Eighth Jud. Dist. Ct.*,
2 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014) (emphasis added). Because Nevada's long-arm
3 statute is coterminous with the federal constitutional limits, a defendant must have such
4 "minimum contacts" with Nevada that it could reasonably anticipate being haled into court in the
5 state, consistent with "traditional notions of fair play and substantial justice." *Arbella Mut.*
6 *Ins. Co. v. Eighth Jud. Dist. Ct.*, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006) (internal marks
7 omitted).

8 Courts analyze personal jurisdiction over a non-resident defendant under two theories:
9 general and specific personal jurisdiction. *Viega*, 130 Nev. at 375, 328 P.3d at 1156. As
10 discussed below, Bullion has not, and cannot, make a prima facie showing that Barrick Gold is
11 subject to either general or specific jurisdiction.

12 ***I. Bullion has previously conceded that Barrick Gold is not subject to***
13 ***general jurisdiction.***

14 "With respect to a corporation, the place of incorporation and principal place of business
15 are paradigm bases for general jurisdiction." *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014)
16 (internal quotations omitted). "Typically, a corporation is 'at home' only where it is incorporated
17 or has its principal place of business." *Viega*, 130 Nev. at 376-77, 328 P.3d at 1158. "Those
18 affiliations have the virtue of being unique – that is, each ordinarily indicates only one place – as
19 well as easily ascertainable." *Daimler AG*, 571 U.S. at 137; *see also Goodyear Dunlop Tires*
20 *Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) ("A court may assert general jurisdiction
21 over foreign (sister-state or foreign-country) corporations to hear any and all claims against them
22 when their affiliations with the State are so 'continuous and systematic' as to render them
23 essentially at home in the forum State.").

24 Bullion has previously conceded that there is no basis for finding that Barrick Gold is
25 subject to general jurisdiction in Nevada. (*See Hr'g. Tr.*, on file, Sept. 22, 2020, 38:14-15) ("So
26 Mr. Pisanelli is right; we are talking about specific jurisdiction . . .") This concession is for good
27 reasons as Barrick Gold is a corporation organized under the laws of Canada, with its principal
28 place of business in Ontario, specifically Toronto. (*See Appx. to Barrick Gold's Mot. to Dismiss*,

1 on file, July 28, 2020, Exs. K-L, 149-155.) It does not have any officers in Nevada. (*Id.*) It does
2 not have any employees, offices, equipment, operations, or property in Nevada; it pays no taxes in
3 Nevada; and it does not conduct any mining, exploration, or similar activities in Nevada. (*Id.*)
4 Thus, however characterized, Barrick Gold's contacts with Nevada are not so "continuous and
5 systematic" as to make it "at home" in Nevada such that it is subject general jurisdiction for all
6 purposes.

7 **2. *Barrick Gold is not subject to specific jurisdiction.***

8 Unlike a general jurisdiction analysis that looks at the defendant's activities in their
9 entirety, "specific jurisdiction is proper only where the cause of action arises from the defendant's
10 contacts with the forum." *Fulbright & Jaworski v. Eighth Jud. Dist. Ct.*, 131 Nev. 30, 37,
11 342 P.3d 997, 1002 (2015) (internal quotation marks omitted). More specifically, for Nevada
12 courts to exercise specific personal jurisdiction over a nonresident defendant: (1) the defendant
13 must purposefully avail itself of the privilege of acting in the forum state or purposefully direct its
14 conduct towards the forum state,⁶ and (2) the cause of action must arise from the defendant's
15 purposeful contact or activities in connection with the forum state, such that it is reasonable to
16 exercise personal jurisdiction. *Dogra v. Liles*, 129 Nev. 932, 937, 314 P.3d 952, 955 (2013);
17 *Arbella*, 122 Nev. at 513, 134 P.3d at 712-13.

18 In the context of the parent-subsidary relationship, there is a distinction between
19 jurisdiction based on the parent company's direct availment and jurisdiction based on the imputed
20 contacts of its subsidiaries, such as by alter ego or an agency theory. *Sonora Diamond Corp. v.*
21 *Superior Court*, 99 Cal. Rptr. 2d 824, 856 (Cal. Ct. App. 2000); *Viega*, 130 Nev. at 375,
22 328 P.3d at 1157 (recognizing that direct availment is distinct from an imputed-contacts analysis).
23 Under a theory of specific personal jurisdiction directed at a parent corporation, the inquiry "is not
24 whether justification exists to disregard the subsidiary's corporate existence or whether the
25 subsidiary is an agent of the parent but rather whether the parent for all intents and purposes has
26 done an act in the forum state of a nature as to make reasonable the forum state's exercise of

27 ⁶ Where, as here, the claims sound in contract, courts apply a "purposeful availment"
28 analysis. *See Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015).

1 jurisdiction over the parent with respect to that act and its consequences." *Sonora*,
2 99 Cal. Rptr. 2d at 856.

3 Barrick Gold has not purposefully availed itself of the privileges and law of Nevada and
4 Bullion's claims in no way arise from Barrick Gold's contacts with this forum.⁷ Previously, this
5 Court determined that Barrick Gold purposefully availed itself as a result of two 2019
6 agreements: (1) the Implementation Agreement between Barrick Gold and Newmont, which
7 integrated their respective subsidiaries' mining assets and operations in Nevada, and (2) the
8 subsequent Limited Liability Agreement, which formed NGM. Respectfully, this ruling was in
9 error. These agreements and Barrick Gold's role as a parent company in the corporate transaction
10 does not constitute contacts by which Barrick Gold purposefully availed itself of the benefits and
11 protection of Nevada.

12 It is well settled that a parent corporation does not purposefully avail itself of privileges of
13 doing business in Nevada by forming and owning an independent subsidiary that conducts
14 business here. *Viega*, 130 Nev. at 381, 328 P.3d at 1160; *McCulloch Corp. v. O'Donnell*,
15 83 Nev. 396, 399, 433 P.2d 839, 840 41 (1967); *Sonora*, 99 Cal. Rptr. 2d at 841-42. The mere fact
16 that Barrick Gold was involved in the "process" and "implementation" of forming NGM is not
17 conduct outside the normal expectation of the parent-subsidiary relationship sufficient for
18 purposeful availment. *Sonora*, 99 Cal. Rptr. 2d at 842 (parent company's involvement in the
19 formation of the mine operation was not conduct outside the normal expectations of the
20 subsidiary relationship). Simply put, Barrick Gold did not purposefully avail itself of the
21 privileges and laws of Nevada through its involvement as a parent company in the formation of
22 NGM.

23 Nor does Bullion's claims arise from these agreements. *See Arbella*, 122 Nev. at 515-16,
24 134 P.3d at 714 ("[T]he claims must have a specific and direct relationship or be intimately
25

26 ⁷ Again, Barrick Gold realizes the Court previously ruled that (1) Barrick Gold purposefully
27 availed itself of the privileges and law of Nevada though the 2019 transactional agreements that
28 formed NGM, (2) Bullion's AOI royalty claims "arise in part from these agreements," and (3) "the
forum-selection clause in the joint venture agreement shows that it is not unreasonable for the
Court to exercise its jurisdiction." Yet, it is Bullion who is now insisting this order no longer has
any application or bearing in this case.

related to the forum contacts." (internal quotations omitted)). Bullion's claims arise from the 1979 Agreement; not the agreements that led to the creation of NGM. *Sonora*, 99 Cal. Rptr. 2d at 848 (parent company's involvement in the process and formation of a subsidiary had no relation or connection to plaintiff's claims over a contract for endowment payment from the mine). Had Bullion's claims arisen from these 2019 agreements, then it would not have named Barrick Gold as a defendant nearly a decade ago in the federal litigation nor included Barrick Gold in the original complaint in this matter in December 2018, months before the agreements were executed.

Moreover, Bullion's inclusion of a meritless "fraudulent conveyance" claim in the TAC does nothing to cure this jurisdictional error. Bullion's own factual recitation for this claim is not levied against Barrick Gold. (*See* TAC ¶ 85, "Goldstrike, Exploration, and other entities owned or controlled by Barrick Gold transferred property") Nor could Bullion make such an assertion as Barrick Gold was neither the transferee nor the transferor. Further, "Nevada law does not recognize [fraudulent transfer] claims against nontransferees under theories of accessory liability." *Contra Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015). Stated slightly differently, Bullion's purported "fraudulent conveyance" claim does not cure the deficient jurisdictional hook to bring Barrick Gold into this action.

B. Barrick Gold Is Not Indirectly Subject to Personal Jurisdiction in Nevada.

Bullion asserted in prior briefings and realleged in its Third Amended Complaint that Barrick Gold is purportedly subject to jurisdiction here through its subsidiaries. (*See* TAC ¶ 12, "[T]he jurisdictional contacts of Goldstrike are attributed to . . . Barrick Gold . . . as each of these defendants is the agent or alter ego of Goldstrike.") Under the law, "corporate entities are *presumed separate*, and thus, the mere existence of a relationship between a parent company and its subsidiaries is not sufficient to establish personal jurisdiction over the parent on the basis of the subsidiaries' minimum contacts with the forum." *Viega*, 130 Nev. at 375, 328 P.3d at 1157 (quotations and citations omitted) (emphasis added); *LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 902, 8 P.3d 841, 845 (2000). The Nevada Supreme Court has "emphasized that '[t]he corporate cloak is not lightly thrown aside.'" *LFC Mktg. Grp., Inc.*, 116 Nev. at 903-04,

1 8 P.3d at 846 (quoting *Baer v. Amos J. Walker, Inc.*, 85 Nev. 219, 220, 452 P.2d 916, 916 (1969)).
2 "Subsidiaries' contacts have been imputed to parent companies only under *narrow exceptions* to
3 this general rule, including alter ego theory and, at least in cases of specific jurisdiction, the
4 agency theory." *Id.* (emphasis added).

5 In other words, it is not Barrick Gold's burden to show that it is a separate and distinct
6 legal entity from its subsidiaries. The law presumes as much. Instead, it is Bullion's obligation to
7 produce some evidence to overcome this presumption so that the corporate cloak may be thrown
8 aside. Bullion cannot remotely come close to making such a showing.

9 ***1. Bullion cannot make a prima facie case on the alter ego doctrine for***
10 ***jurisdictional purposes.***

11 "The alter ego theory allows plaintiffs to pierce the corporate veil to impute a subsidiary's
12 contacts to the parent company by showing that the subsidiary and the parent are one and the
13 same." *Viega*, 130 Nev. at 376, 328 P.3d at 1157. The law requires Bullion to go beyond the
14 pleadings and proffer some competent evidence supporting a finding of alter ego to support
15 jurisdiction. *Trump*, 109 Nev. at 693, 857 P.2d at 744 (explaining that the plaintiff "may not
16 simply rely on the allegations of the complaint to establish personal jurisdiction."). Despite
17 multiple rounds of briefing and jurisdictional discovery, Bullion has failed to present even the
18 slightest bit of evidence that would support a finding that Barrick Gold's indirect subsidiaries are
19 its alter ego.

20 Importantly, a parent-subsidary relationship does not on its own establish that two entities
21 are alter egos. *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1021 (9th Cir. 2017); *Bonanza*
22 *Hotel Gift Shop, Inc. v. Bonanza No. 2*, 95 Nev. 463, 466, 596 P.2d 227, 229 (1979) ("A mere
23 showing that one corporation is owned by another, or that the two share interlocking officers or
24 directors is insufficient to support a finding of alter ego."). Instead, "[i]t must further be shown
25 that the subsidiary corporation is so organized and controlled, and its affairs are so conducted that
26 it is, in fact, a mere instrumentality or adjunct of another corporation." *Bonanza*, 95 Nev. at 466,
27 596 P.2d at 229 (quotations and citations omitted).

1 To prove alter ego for jurisdictional purposes, Bullion must make a *prima facie* case on
2 the alter-ego doctrine, which includes the following requirements: "(1) the corporation must be
3 influenced and governed by the person asserted to be the alter ego; (2) there must be such unity of
4 interest and ownership that one is inseparable from the other; and (3) the facts must be such that
5 adherence to the corporate fiction of a separate entity would, under the circumstances, sanction
6 fraud or promote injustice." *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 601, 747 P.2d 884,
7 886 (1987); *Williams*, 851 F.3d at 1021 (noting that plaintiff must make out a *prima facie* case on
8 the alter ego requirements for personal jurisdiction).

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

15 Here, there is no basis to pierce the corporate form of Barrick Gold or any of its
16 subsidiaries operating in Nevada. Barrick Gold scrupulously maintains a separate accounting for
17 each of its subsidiaries according to generally accepted accounting principles, none of
18 Barrick Gold's subsidiaries' funds have been improperly "diverted" to anyone, Barrick Gold does
19 not treat its subsidiaries' assets as its own, and Barrick Gold and its subsidiaries carefully maintain
20 all necessary formalities, including separate boards, officers, bank accounts, and corporate
21 records. (See Appx. to Barrick Gold's Mot. to Dismiss, on file, July 28, 2020,
22 Exs. K-L, 149-155); see *Bonanza*, 95 Nev. at 467, 596 P.2d at 230 (subsidiary was not the
23 alter ego of a parent corporation when the two entities maintained separate corporate books and
24 accounts, held separate directors' meetings, recorded separate minutes with full corporate
25 formalities, and had independent headquarters).

26 *Perhaps most importantly, there is no evidence or allegation that any of Barrick Gold's*
27 *subsidiaries are undercapitalized, that Barrick Gold has looted the assets of its subsidiaries, or*
28 *that recognizing their separate corporate forms will work a fraud or injustice. Bonanza,*

1 95 Nev. at 467, 596 P.2d at 230; *Viega*, 130 Nev. at 383, 328 P.3d at 1162 (Pickering, J.,
2 concurring in result) (noting that alter-ego theory did not apply because the parent "did not loot or
3 damage [subsidiary's] solvency"). On the contrary, all of Barrick Gold's subsidiaries are
4 adequately capitalized for their purposes. (*See* Appx. to Barrick Gold's Mot. to Dismiss, on file,
5 July 28, 2020, Exs. K-L, 149-155.) Bullion's contention that adherence to presumption of
6 corporate separateness would sanction fraud or promote injustice is unavailing. The subsidiaries
7 that own the land and the minerals from which Bullion seeks a royalty are named defendants in
8 this action and, by Bullion's own allegations, they are the only parties that could possibly be
9 subject to liability.⁸ Indeed, for this very reason this Court has already determined that Bullion's
10 alter ego allegations are "premature" and they would only "become a more relevant issue if
11 [NGM] and [Goldstrike] do not have assets to satisfy a judgment." (*See* Order re Motions to
12 Dismiss, on file, Dec. 9, 2020.)

13 **2. Bullion cannot make a *prima facie* case on its agency theory.**

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

20 In *Viega*, the Nevada Supreme Court explained that when a plaintiff like Bullion claims a
21 Nevada court has jurisdiction over a foreign parent corporation based upon an agency theory
22 related to its subsidiaries, the plaintiff must establish more than that the parent company exerts
23 some control over the subsidiary. *Id.* at 378, 328 P.3d at 1158. Instead, a plaintiff must show that

24 _____
25 ⁸ Even if a court determines that one entity is the alter ego of the other, the foreign entity's
26 activities in the forum jurisdiction must still meet the general jurisdiction requirements of being
27 essentially "at home," which Bullion has conceded does not exist here. *Daimler AG*, 571 U.S.
28 at 136 ("Even if we were to assume that [the domestic subsidiary] is at home in California, and
further to assume that [its] contacts are imputable to [the foreign parent corporation], there would
still be no basis to subject [the parent] to general jurisdiction in California, for [the parent's] slim
contacts with the State hardly render it at home there.").

1 the parent company's control is *so pervasive* that it veers "into management by the exercise of
2 control over the internal affairs of the subsidiary and the determination of how the company will
3 be operated on a day-to-day basis such that the parent has moved beyond the establishment of
4 general policy and direction for the subsidiary and in effect taken over performance of the
5 subsidiary's day-to-day operations in carrying out that policy." *Id.* at 379, 328 P.3d at 1159
6 (quotations and citations omitted).⁹

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

18 Barrick Gold supervises its subsidiaries to the same degree that the *Viega* court found was
19 insufficient. For example, while Barrick Gold monitors its subsidiaries' performance, supervises
20 their budget decisions, requires approval for large financial transactions, issues consolidated
21 corporate and financial reports, and establishes general policies and procedures, it leaves

22 ⁹ In *Daimler AG*, the United States Supreme Court rejected an agency theory of general
23 jurisdiction. *Daimler AG*, 571 U.S. at 155-56. Similarly, the Nevada Supreme Court's decision in
24 *Viega* indicated that an agency theory is only applicable for specific personal jurisdiction. *Viega*,
25 130 Nev. at 376, 328 P.3d at 1157 ("Subsidiaries' contacts have been imputed to parent companies
26 only under narrow exceptions to this general rule, including alter ego theory and, *at least in cases*
27 *of specific jurisdiction, the "agency" theory.*"). It should be noted, however, that the Ninth Circuit
28 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 day-to-day management to its subsidiaries themselves, including over their mining and processing
2 operations, personnel, and legal affairs. (*See* Appx. to Barrick Gold's Mot. to Dismiss, on file,
3 July 28, 2020, Exs. K-L, 149-155.) Bullion offers nothing more than what *Viega* rejected.

4 In *Viega*, the Nevada Supreme Court cited extensively to *Sonora*, a case similar to this
5 one. In *Sonora*, a California school district sued a Nevada corporation ("Sonora") and its
6 Canadian parent ("Diamond") over a contract by which Sonora, the subsidiary, purchased a gold
7 mine from the district in exchange for, among other things, annual payments secured by a royalty.

8 The court found that Diamond, the parent corporation, had been formed shortly before the
9 purchase of the mine "for the purpose of acquiring and developing the" mine. *Sonora*,
10 99 Cal. Rptr. 2d at 832. Although Sonora and Diamond maintained separate boards and officers,
11 the court found that "[t]here is and has been an overlap of individuals serving as directors and
12 officers of both companies" and Sonora's board often met at the offices of Diamond in Toronto,
13 Canada. *Id.* The court further noted that Diamond, a publicly traded company, consolidated all
14 of its subsidiaries' information into its annual reports and failed to distinguish between Diamond
15 and its subsidiaries concerning their ownership of the mine in question – often suggesting that
16 Diamond owned the mine directly. *Id.* at 832. Sonora's corporate records were maintained at
17 Diamond's offices in Toronto. *Id.* at 833. Furthermore, when Sonora sold some property near the
18 mine in exchange for a promissory note, Sonora assigned the note to Diamond to reduce Sonora's
19 inter-company debt to Diamond. *Id.* When Sonora needed to borrow money to finance the
20 mining activities, Diamond guaranteed the loans. *Id.* Sonora was, at times, "dependent on . . . the
21 intercompany loans from Diamond" to cover operating costs. *Id.*

22 Addressing the agency theory of imputing contacts, the *Sonora* court recognized that
23 Diamond certainly exercised control over Sonora, but the question was whether such control was
24 "so pervasive and continual that the subsidiary may be considered nothing more than an agent or
25 instrumentality of the parent." *Id.* at 838. And, importantly, given the factual allegations here,
26 the court concluded that "such common characteristics as interlocking directors and officers,
27 consolidated reporting, and shared professional services" **do not** "trespass the boundaries of
28 legitimate ownership and control of the subsidiary." *Id.* at 838. As the court noted, "Diamond's

1 monitoring of Sonora Mining's performance, supervising Sonora Mining's budget decisions, and
2 setting general policies and procedures to be followed by Sonora Mining" are all "*appropriate,*
3 *normal involvement by a parent corporation,*" either in isolation or in aggregate. *Id.* at 845
4 (emphasis added). Similarly, financial transactions between a parent corporation and its
5 subsidiary, such as start-up capital from the parent and debt payments by the subsidiary, do not
6 make the parent liable for its subsidiary's contacts where such transactions are "separately
7 recorded, maintained in the records of each, documented as intercompany loans and similar
8 arrangements, and dealt with as legitimate obligations." *Id.* at 843.

9 Given that the principal asset was an active gold mine, the *Sonora* court also looked at
10 which entity – Sonora or Diamond – was responsible for managing the day-to-day operations of
11 the mine. The court noted that there was "no evidence that Diamond directed or participated in
12 the methods or means by which Sonora Mining performed th[e mining] function" or of "any
13 direct involvement by Diamond in any 'on the site' operational decisions." *Id.* at 845. The court
14 observed that even though Diamond employees would occasionally assist Sonora with its mining
15 activities, those contacts were rare and isolated. *Id.* In short, the court concluded that
16 notwithstanding Diamond's involvement in the business affairs of its subsidiary, that involvement
17 did not transgress the boundaries of appropriate oversight and management.

18 Here, Barrick Gold's involvement with its subsidiaries is even more attenuated than
19 Diamond's. For example, Barrick Gold has been the ultimate parent company of the
20 Barrick family of companies for decades – it was not formed to acquire and develop any mine in
21 Nevada (or anywhere else for that matter). Additionally, while Barrick Gold certainly monitors
22 the financial performance of its subsidiaries, it has not directly provided regular capital infusions
23 to its Nevada subsidiaries, as Diamond did with Sonora. (*See Appx. to Barrick Gold's Mot. to*
24 *Dismiss, on file, July 28, 2020, Exs. K-L, 149-155.*) While Diamond centralized management
25 and record-keeping functions at its Toronto headquarters, even for Sonora's board of directors,
26 Barrick Gold has historically had a far less centralized management structure, allowing its
27 subsidiaries to manage its mining interests in a diffused regional structure. (*See, e.g., Appx. to*
28

1 Barrick Gold's Mot. to Dismiss, on file, July 28, 2020, Ex. I, Astorga Dep. Tr. 35:15-36:2,
2 36:18-20; Ex. J, Bolland Dep. Tr. 13:20-14:5.)

3 Barrick Gold has never directed the mining activities of any of its subsidiaries around the
4 world, including those operating in Nevada. While Barrick Gold has provided global policies
5 relating to things like supply-chain management and purchasing, it has never told any of its mines
6 how to conduct their day-to-day mining operations, much less assumed direct control over them.
7 (*See, e.g.*, Appx. to Barrick Gold's Mot. to Dismiss, on file, July 28, 2020, Ex. G,
8 Mansanti Dep. Tr., Dec. 20, 2017, 66:12-20; Ex. H, Measom Dep. Tr., March 21, 2018,
9 11:18-12:13; Ex. I, Astorga Dep. Tr., March 20, 2018, 36:3-17.)

10 But there is more. Even if the Nevada subsidiaries are assumed to be Barrick Gold's
11 agents (they are not), Bullion has still failed to allege, and cannot show, that this purported agency
12 has any nexus to the claims. *Viega*, 130 Nev. at 381, 328 P.3d at 1160 ("And even if, as the HOA
13 asserts, American Viega is German Viega's agent for American operations and the face of
14 American marketing, the HOA has not shown that that particular agency has resulted in the basis
15 for the claims at issue here"); *Dogra*, 129 Nev. at 937, 314 P.3d at 955 ("Nevada may
16 exercise specific jurisdiction over a nonresident defendant if the defendant purposefully avails
17 himself or herself of the protections of Nevada's laws, or purposefully directs her conduct towards
18 Nevada, and the *plaintiff's claim actually arises from that purposeful conduct.*") (emphasis
19 added).

20 **C. Exercising Jurisdiction over Barrick Gold is not reasonable.**

21 "[Q]uestions involving personal jurisdiction mandate an inquiry whether it is reasonable to
22 require the defendant to defend the particular suit which is brought there." *Trump*, 109 Nev.
23 at 700-01, 857 P.2d at 749 (citations and quotations omitted). "Factors relevant to this inquiry are:
24 (1) the interstate judicial system's interest in obtaining the most efficient resolution of
25 controversies; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in
26 obtaining convenient and effective relief; and (4) the interest of the several states in furthering
27 substantive social policies." *Id.* Moreover, where an international defendant is concerned, a court
28 must also "consider the procedural and substantive policies of other nations whose interests are

1 affected by the assertion of jurisdiction by the [Nevada] court." *Asahi Metal Indus. Co. v.*
2 *Superior Ct. of California, Solano Cty.*, 480 U.S. 102, 115 (1987)

3 Bullion has previously suggested, and the Court determined that, "the forum-selection
4 clause in the [Limited Liability Company Agreement for NGM] shows that it is not unreasonable
5 for the Court to exercise its jurisdiction in this case." (*See* Order re Motions to Dismiss, on file,
6 Dec. 9, 2020.) Respectfully, the forum selection clause in the NGM Limited Liability Company
7 Agreement – an agreement to which Bullion is not a party and has no rights – is not relevant to
8 whether it is reasonable for Barrick Gold to defend against Bullion's specific lawsuit seeking AOI
9 royalties pursuant to the 1979 Agreement. The forum selection clause in the NGM Limited
10 Liability Company Agreement expressly provides that the parties, including Barrick Gold, were
11 only agreeing to jurisdiction in Nevada for disputes among themselves relating to that specific
12 agreement and the rights and obligations of the parties to that agreement. (*See* Appx. to
13 Barrick Holding's Mot. to Dismiss, on file, Aug. 6, 2020, Ex. F.) Indeed, the Nevada forum
14 selection clause in the NGM Limited Liability Company Agreement provides no more support to
15 the reasonableness of specific jurisdiction over Barrick Gold in this case than the Canadian forum
16 selection clause in the NGM Implementation Agreement supports the unreasonableness of
17 exercising specific jurisdiction over Barrick Gold in this case. (*See* Appx. to Barrick Holding's
18 Mot. to Dismiss, on file, Aug. 6, 2020, Ex. E.)

19 Subjecting Barrick Gold to jurisdiction here merely because it is the ultimate foreign
20 parent company of subsidiaries operating in Nevada would be unreasonable and also contrary to
21 the corporate business structures created by the Nevada Legislature. Bullion's claims are
22 premised on the notion that it is owed royalty from mineral properties in Nevada. Barrick Gold
23 does not own any land or operate any mines in Nevada. Importantly, ***Bullion does not – and***
24 ***cannot – show that it needs to drag a foreign corporation into this case to achieve a remedy.***
25 The subsidiaries – *i.e.*, the separate corporate entities that operate in and do business in Nevada
26 and that own the land purportedly subject to Bullion's AOI royalty claim - have been named in
27 this case. Moreover, and importantly given the spurious arguments that the remedies of
28 constructive trust and alter ego are needed here to protect Bullion, there is no evidence that any of

1 these subsidiaries are undercapitalized in the event of an adverse result. *See*
2 *F. Hoffman-La Roche, Ltd. v. Superior Court*, 30 Cal. Rptr. 3d 407, 424-25 (Cal. Ct. App. 2005)
3 (finding that it was unreasonable to subject a foreign parent company to jurisdiction where the
4 plaintiff was not left without a remedy and no jurisdictional barrier to pursue their claims against
5 the subsidiaries with no hint of evidence the subsidiaries were incapable of responding to
6 damages). Just because Bullion wants the foreign parent in the case does not mean that there is a
7 legal basis for it. There is not. And just because Bullion wants the foreign parent in this case
8 does not mean it is reasonable to haul the foreign parent into court here. It is not.

9 **IV. CONCLUSION**

10 Barrick Gold is not (and never was) subject to personal jurisdiction in Nevada. Barrick Gold
11 should be dismissed from this action.

12 DATED this 22nd day of February, 2021.

13 PISANELLI BICE PLLC

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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 22nd day of February, 2021, I filed a true and correct copy of the foregoing **BARRICK GOLD CORPORATION'S MOTION TO DISMISS PLAINTIFF'S THIRD 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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EXHIBIT A

In the Supreme Court of Nevada

BARRICK GOLD CORPORATION,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT of the
State of Nevada, in and for the County of
Clark; and the Honorable ELIZABETH
GOFF GONZALEZ, District Judge,

Respondents,

and

BULLION MONARCH MINING, INC.,

Real Party in Interest.

Electronically Filed
Feb 10 2021 02:43 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court
Case No. A785913

MOTION TO DISMISS PETITION

or

NOTICE OF INTENT TO OPPOSE PETITION AS MOOT

Barrick Gold Corporation's writ petition raises a jurisdictional challenge to a complaint that has since been amended and, thus, superseded. This Court should dismiss the petition as moot.

**A. This Court Cannot Decide Abstract
Questions about a Superseded Complaint**

A writ petition is moot when it challenges personal jurisdiction based on a complaint that is no longer the operative pleading.

1. A Writ Petition that Does Not Present a Live Question Must Be Dismissed as Moot

“This court’s duty is ‘to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions.’” *Degraw v. Eighth Judicial Dist. Court*, 134 Nev. 330, 332, 419 P.3d 136, 139 (2018) (quoting *NCAA v. Univ. of Nev.*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981)).

This element of justiciability must be assessed at all stages, including on a petition for extraordinary writ relief: “even though a case may present a live controversy at its beginning, subsequent events may render the case moot.” *Solid v. Eighth Judicial Dist. Court*, 133 Nev. 118, 120, 393 P.3d 666, 670 (2017) (quoting *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010)). As this Court has recognized for more than a century, when a writ petition becomes moot, it must be dismissed. *State v. Dist. Court of Sixth Judicial Dist.*, 43 Nev. 320, 184 P. 1023, 1023 (1919); *see also Valdez-Jimenez v. Eighth Judicial Dist. Court*, 136 Nev. 155, 158, 460 P.3d 976, 981 (2020); *Degraw*, 134 Nev. at 332, 419 P.3d at 139; *Marquis & Aurbach v. Eighth Judicial Dist. Court*, 122 Nev. 1147, 1162 & n.32, 146 P.3d 1130, 1140 & n.32 (2006) (citing *Univ. of Nev. v. Tarkanian*, 95 Nev. 389, 394, 594

P.2d 1159, 1162 (1979); *Binegar v. Eighth Judicial Dist. Court*, 112 Nev. 544, 548, 915 P.2d 889, 892 (1996).

2. An Amended Complaint Supersedes an Earlier One

One of the most straightforward ways that writ relief becomes moot is when it challenges the sufficiency of a superseded complaint. The Colorado Court of Appeals explained how this doctrine works in the context of an appeal, rejecting the plaintiffs' argument that the court go back and reexamine the original complaint:

On appeal, plaintiffs challenge the trial court's dismissal of the original complaint. The amended complaint, which iterated and expanded the original complaint, superseded the original complaint. . . . Hence, any errors in the trial court's ruling regarding the original complaint were made moot or waived by the filing of the amended complaint, and cannot be raised on this appeal.

Ireland v. Wynkoop, 539 P.2d 1349, 1355 (Colo. Ct. App. 1975).¹

¹ Accord See *JKC3H8 v. Colton*, 164 Cal. Rptr. 3d 450, 456–57 (Ct. App. 2013) (“[T]he filing of an amended complaint moots a motion directed to a prior complaint.” (citation omitted)); *People ex rel. Strathmann v. Aca-cia Research Corp.*, 148 Cal. Rptr. 3d 361, 374 (Ct. App. 2012); *Jacobs v. Yellow Cab Affiliation, Inc.*, 73 N.E.3d 1220, 1234–35 (Ill. App. Ct. 2017); *State Comp. Ins. Fund v. Superior Court*, 109 Cal. Rptr. 3d 88, 93 (Ct. App. 2010) (requiring a new (or renewed) motion directed to the amended complaint); *Vanderberg v. Rios*, 798 So. 2d 806, 806–07 (Fla. Dist. Ct. App. 2001) (“the legal sufficiency of the original complaint was

This Court also recognizes that an amended or supplemental complaint “supersede[s] all claims for relief alleged in the original complaint.” *McKnight Family, L.L.P. v. Adept Mgmt.*, 129 Nev. 610, 615, 310 P.3d 555, 558 (2013) (citing *Las Vegas Network, Inc. v. B. Shawcross & Assocs.*, 80 Nev. 405, 407, 395 P.2d 520, 521 (1964)); *Rondono v. Ballow*, 100 Nev. 142, 143, 676 P.2d 807, 808 (1984); *McFadden v. Ellsworth Mill & Mining Co.*, 8 Nev. 57, 57 (1872).

3. Arguments about Personal Jurisdiction Directed to an Earlier Complaint Are Moot

This principle applies to objections based on personal jurisdiction, too. In *Ex parte Puccio*, the defendant moved to dismiss the first complaint based on insufficient minimum contacts and submitted an affidavit in support of that complaint. 923 So. 2d 1069, 1072 (Ala. 2005). The plaintiff then amended the complaint. *Id.* The defendant moved again to dismiss, but in attaching the same affidavit, he neglected to address the amended complaint’s alter ego allegations that supported the exercise of personal jurisdiction. *Id.* at 1073. After the trial court denied

rendered moot by the filing of the amended complaint”); *Lipary v. Posner*, 409 N.Y.S.2d 363, 363–64 (Sup. Ct. 1978); *Atherton v. City of Champaign*, 218 N.E.2d 106 (Ill. App. Ct. 1966) (headnotes).

the second motion, the defendant filed a writ petition in the Alabama Supreme Court. *Id.* at 1071. The Alabama Supreme Court determined that the defendant’s first motion to dismiss was moot as directed to a superseded pleading; and the second motion did not address the alter-ego allegations of the operative complaint, so the trial court was justified in denying the motion. *Id.* at 1073, 1077.²

Similarly, in *Ulusal v. Lentz Engineering, L.C.*, the Texas Court of Appeals rejected a defendant’s attempt to contest personal jurisdiction by pointing to allegations in a prior pleading: the allegations in the plaintiff’s first pleading, whether sufficient or not, do “not defeat its allegations in its live pleading.” 491 S.W.3d 910, 915–16 (Tex. App. 2016), *abrogated on other grounds by Dudley Constr., Ltd. v. Act Pipe & Supply, Inc.*, 545 S.W.3d 532 (Tex. 2018).

² In support of its mootness holding, the Alabama Supreme Court cited citing *Holley v. St. Paul Fire & Marine Ins. Co.*, 396 So. 2d 75 (Ala. 1981); *Kentucky Press Ass’n, Inc. v. Kentucky*, 355 F. Supp. 2d 853 (E.D. Ky. 2005); and *In re Colonial Ltd. P’ship Litig.*, 854 F. Supp. 64, 80 (D. Conn. 1994).

B. Barrick Gold's Petition Is Moot Because It Does Not Challenge the Operative Complaint

The application of these principles is straightforward here: Barrick Gold argues that the district court erred in exercising personal jurisdiction, but its petition takes aim at a complaint that has been amended. (Exhibit A.) Barrick Gold's remedy lies in the district court. Yet Barrick Gold has not obtained a jurisdictional ruling on the operative complaint.

And the new complaint is not merely a formality. At the request of Barrick Gold's co-defendants, allegations of fraud in connection with alter ego and constructive trust are now stated with greater specificity; and the complaint adds a claim of fraudulent conveyance based on transfers in the wake of a 2019 joint venture orchestrated by Barrick Gold. Though the district court was correct to overrule Barrick Gold's objection to personal jurisdiction, for this Court to review that ruling now—after the operative complaint has been amended—would be a purely academic exercise. Barrick Gold's petition is moot.

CONCLUSION

This Court should dismiss Barrick Gold's petition as moot. Doing so would save the parties and this Court the considerable expense of full briefing and review of the substantive issues.

Alternatively, this Court may construe this motion as Bullion's notice of its intent to oppose the petition, including on mootness grounds.

Dated this 10th day of February, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Abraham G. Smith
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*Attorneys for Bullion
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CERTIFICATE OF SERVICE

I certify that on February 10, 2021, I submitted the foregoing MOTION TO DISMISS PETITION OR NOTICE OF INTENT TO OPPOSE PETITION AS MOOT for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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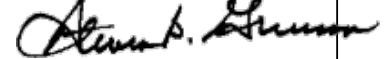
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The Honorable Elizabeth Gonzalez
Department 11
EIGHTH JUDICIAL DISTRICT COURT
200 Lewis Avenue
Las Vegas, NV 89155

/s/ Emily D. Kapolnai
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A

EXHIBIT A



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DISTRICT COURT
CLARK COUNTY, NEVADA

BULLION MONARCH MINING,
INC.,

Plaintiff,

vs.

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. 11

THIRD AMENDED COMPLAINT

(Jury Trial Demanded)

(Redacted)

Business court requested (EDCR
1.61(a)(2)(ii), (iii))

Exempt from arbitration (NAR 3(A)):
Probable award in excess of \$50,000,
declaratory relief, and equitable relief

Bullion Monarch Mining, Inc. ("Bullion") alleges as its amended com-
plaint:

PARTIES AND JURISDICTION

1. Bullion is a Utah corporation doing business in Nevada at all times
relevant hereto.

1 2. Barrick Goldstrike Mines, Inc. (“Goldstrike”) is a Colorado corpora-
2 tion doing business in Nevada at all times relevant hereto.

3 3. Barrick Gold Exploration Inc. (“Exploration”) is a Delaware corpo-
4 ration doing business in Nevada at all times relevant hereto. Exploration is—
5 and at all relevant times was—the 100% owner of Goldstrike.

6 4. Barrick Gold Corporation (“Barrick Gold”) is an Ontario corporation
7 doing business in Nevada at all times relevant hereto. Barrick Gold is—and at
8 all relevant times was—the 100% owner of Exploration (and/or is a corporate
9 parent of Goldstrike and Exploration).

10 5. Nevada Gold Mines, LLC (“Nevada Gold”) is a Delaware limited lia-
11 bility company doing business in Nevada at all times relevant hereto. Nevada
12 Gold was formed by Barrick Gold and Newmont Goldcorp Corporation (formerly
13 Newmont Mining Corporation) (“Newmont”) for the purpose of putting most of
14 Barrick’s and Newmont’s Nevada mining operations into one entity, with Bar-
15 rick Gold being the operator. Upon information and belief, Nevada Gold has
16 been assigned and/or has assumed control over mineral properties subject to
17 this lawsuit, including mineral properties formerly owned by Goldstrike, Explo-
18 ration, Barrick Gold, and Newmont.

19 6. Upon information and belief, on or about July 1, 2019, Goldstrike,
20 Exploration, Barrick Gold, and Newmont transferred and conveyed all of their
21 rights, title and interest in and to certain mineral properties located in Eureka
22 County and Elko County, Nevada, to Nevada Gold;¹ these mineral properties in-

23
24
25
26
27
28
¹

[REDACTED]

1 clude the mineral properties from which Bullion maintains it has been and con-
2 tinues to be owed a production royalty.

3 7. Barrick Nevada Holding LLC ("Barrick Holding") is a Delaware lim-
4 ited liability company doing business in Nevada at all times relevant hereto.

5 8. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 9. Bullion does not know the true names or capacities of some defend-
14 ants and therefore sues them by fictitious "Doe" designations. Bullion will
15 amend the complaint once it ascertains the Doe defendants' true names and ca-
16 pacities.

17 10. Upon information and belief, one or more defendants maintain of-
18 fices in Henderson, Nevada.

19 11. This Court has jurisdiction over defendants under NRS 14.065(1)
20 and the United States Constitution because defendants have sufficient mini-
21 mum contacts directed toward Nevada, and this suit arises out of those Nevada
22 contacts.

23 12. In addition, the jurisdictional contacts of Goldstrike are attributed
24 to Exploration, Barrick Gold, Nevada Gold, and Barrick Holding, as each of

25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 these defendants is the agent or alter ego of Goldstrike.

2 13. This Court has subject-matter jurisdiction under Article 6, section
3 6(1) of the Nevada Constitution and NRS 4.370(1)(a) because Bullion seeks
4 damages in excess of \$15,000.

5 14. It is also appropriate to commence the action in this Court pursuant
6 to NRS 13.010 and 13.040.

7 **FACTS**

8 15. Through the 1960s and 1970s, Bullion's predecessor in interest,
9 Bullion Monarch Company (also "Bullion") prospected extensively in what is
10 now known as the Carlin Gold Trend and accumulated valuable mineral proper-
11 ties, including patented and unpatented mining claims throughout the area.

12 16. In 1979, four prospective members of a joint venture negotiated
13 with Bullion to give up both its mining claims in a particularly profitable area
14 and also to refrain from competing for any other property in the surrounding
15 area.

16 17. On May 10, 1979, Bullion and defendants' predecessors in interest,
17 Universal Explorations, Ltd. and Universal Gas, Inc. ("Universal"), entered into
18 an agreement (the "1979 Agreement"). A copy of the 1979 Agreement is at-
19 tached as Exhibit 1.

20 18. Pursuant to the terms of the 1979 Agreement, Bullion conveyed its
21 mineral properties as described in the 1979 Agreement, Exhibit A-1 (the origi-
22 nal "Subject Property") to defendants' predecessors in interest. In exchange for
23 conveying the Subject Property, and an agreement by Bullion not to prospect
24 further in the area, Bullion received a production royalty based on production
25 from the original Subject Property and from additional mineral properties ac-
26 quired within an area of interest in an 8-mile radius surrounding the Subject
27 Property described in Exhibit A-2 (the "Area of Interest").

1 19. Under paragraph 11 of the 1979 Agreement, the terms and condi-
2 tions of the 1979 Agreement, including Bullion's royalty, apply to all mineral
3 properties acquired after the date of the agreement by the other parties to the
4 1979 Agreement, or by their successors in interest, within the Area of Interest,
5 whether by location of mining claims under the 1872 Mining Law, or by "leasing
6 or purchase of private lands and minerals or unpatented mining claims."

7 20. The term of the 1979 Agreement is 99 years, through 2078.

8 21. Bullion is functionally excluded from prospecting in or acquiring
9 any other interest in the Area of Interest through 2078 and from sharing di-
10 rectly in the proceeds of the joint venture, apart from its royalty.

11 22. Further, in the event a mining interest from within the Area of In-
12 terest was or is used to acquire mining interests outside the Area of Interest,
13 Bullion's royalty interest would also follow to the new property. Upon infor-
14 mation and belief, this has occurred.

15 23. Bullion's royalty under the 1979 Agreement is threefold. First, it
16 applies to production from the original claims Bullion transferred to the ven-
17 ture, claims that formed the core of the venture's original "Subject Property."
18 Second, as Universal (or its successors) acquired additional property in the area
19 surrounding Bullion's claims—the "area of interest" in which Bullion was pro-
20 hibited from competing—the "Subject Property" as between Universal and Bul-
21 lion would expand to subject those claims to the same royalty. If the co-ventur-
22 ers exercised their right to share in the acquisition costs of any area-of-interest
23 property, that property would become "Subject Property" of the venture for all
24 purposes. But even if the co-venturers declined, Bullion was still entitled to its
25 royalty as that property would have become "Subject Property" as between Uni-
26 versal and Bullion. Third, paragraph 18 of the 1979 Agreement provides that
27 the rights and obligations of the parties, including the obligation to pay Bul-
28 lion's royalty and Bullion's obligation not to compete, "inure to the benefit of

1 and [are] binding upon the successors and assigns of the parties hereto.” De-
2 fendants are successors and assigns of certain of the parties to the 1979 Agree-
3 ment are liable for the Bullion’s royalty.

4 24. Pursuant to the terms of the 1979 Agreement, Bullion’s royalty pay-
5 ments began with a series of fixed payments up to \$1 million, and was thereaf-
6 ter limited to a 1% gross smelter return (GSR) royalty based upon mineral pro-
7 duction. Bullion may elect to take any monthly production royalty in kind but
8 is responsible for loading and transportation if it takes the royalty in kind.

9 25. In 1984 and 1986, two joint venture agreements shifted the opera-
10 tion from Universal to Nicor Mineral Ventures, Inc., although Universal’s suc-
11 cessor, Petrol Oil & Gas Co., continued to be a member of those ventures. Nicor
12 agreed to “make or arrange for *all payments* required by the Existing Agree-
13 ments,” which includes the 1979 Agreement. (1984 Venture Agreement § 8.2(e);
14 1986 Venture Agreement § 8.2(e) (emphasis added).)

15 26. On April 26, 1990, High Desert Mineral Resources of Nevada, Inc.
16 (“High Desert”) entered into an option agreement with the 1986 joint venture
17 (known as the “Bullion-Monarch Joint Venture” but unrelated to Bullion),
18 which granted to High Desert the option to acquire all of the Subject Property
19 under the 1979 Agreement. Further, under the terms of the Option Agreement,
20 if High Desert exercised the option, High Desert agreed to assume and become
21 liable for all of the obligations, rentals, royalties, and other payments due, or to
22 become due, under the 1979 Agreement.

23 27. On July 10, 1990, High Desert exercised the option, assumed, and
24 otherwise became subject to all of the terms, obligations, and conditions of the
25 1979 Agreement, including the Area of Interest provision and Bullion’s royalty,
26 and became obligated to pay all of the obligations, rentals, royalties, and other
27 payments due, or to become due, under the 1979 Agreement.

28 28. On December 23, 1991, High Desert entered into an agreement with

1 Newmont Gold Company (“Newmont”) by which Newmont assumed Bullion’s
2 royalty on the Exhibit A-1 Subject Property and Newmont specifically rejected
3 assuming the obligation to pay Bullion royalties arising from properties within
4 the Area of Interest, leaving the obligation to pay Bullion royalties arising from
5 properties in the Area of Interest with High Desert.

6 29. Between July 10, 1990 and today, upon information and belief, de-
7 fendants have entered into various agreements with High Desert, the principals
8 in High Desert, and/or entities directly owned by or related to High Desert or its
9 principals. As a result of these agreements, defendants and/or mineral proper-
10 ties in which defendants had an interest, or acquired an interest, became sub-
11 ject to the terms, obligations, and conditions of the 1979 Agreement, including
12 the obligation for payment of a royalty to plaintiff based upon production from
13 said mineral properties since these properties are located within the Area of In-
14 terest.

15 30. Between December 23, 1991 and today, upon information and be-
16 lief, defendants have entered into various agreements with Newmont. As a re-
17 sult of these agreements, defendants and/or mineral properties in which defend-
18 ants had an interest, or acquired an interest, became subject to the terms, obli-
19 gations and conditions of the 1979 Agreement, including the obligation for pay-
20 ment of a royalty to Bullion based upon production from said properties since
21 these properties are located within the Area of Interest.

22 31. Goldstrike, through a succession of companies, including, but not
23 limited to Barrick HD Inc., are successors in interest to High Desert Mineral
24 Resources of Nevada, Inc. In 1995, Goldstrike acquired High Desert Mineral
25 Resources of Nevada, Inc. (“High Desert”) and later merged with High Desert,
26 with Goldstrike being the surviving company. Goldstrike acquired High De-
27 sert’s obligation to pay Bullion’s royalty, including within the Area of Interest,
28 which High Desert had fully disclosed. After its merger with High Desert,

1 Goldstrike stands in the shoes of High Desert. As a result of the merger,
2 Goldstrike is obligated to perform all of High Desert's obligations which re-
3 sulted from High Desert's exercise of the 1990 Option Agreement.

4 32. [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 33. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 a. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 b. [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 c. [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 34. These acquisitions of mineral properties within the Area of Interest
27 by Barrick Gold subsidiaries other than Goldstrike were made in order to avoid
28 the Bullion's royalty, which Goldstrike had specifically assumed, and which

1 Goldstrike would have to pay if it had made the same acquisitions. These min-
2 eral properties acquired by sister affiliates of Goldstrike within the Area of In-
3 terest are therefore subject to the Area of Interest provision, including the obli-
4 gation to pay Bullion's royalty.

5 35. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 36. Bullion originally filed a complaint against Goldstrike on June 22,
19 2009 in the U.S. District Court for the District of Nevada. For more than eight
20 years, the claims went forward based on Goldstrike's representation that it was
21 not contesting the federal court's diversity jurisdiction. On September 8, 2017,
22 however, Goldstrike for the first time filed a motion to dismiss contesting juris-
23 diction. (Case No. 3:09-cv-00612-MMD-WGC, ECF 260.)

24 37. That motion was initially denied without prejudice to allow for ju-
25 risdictional discovery. (ECF 268.)

26 38. After discovery, Barrick refiled its motion (ECF 281), which the dis-
27 trict court granted on November 1, 2018. (ECF 302.)

28 39. Bullion filed this complaint on December 12, 2018 while it pursued

1 an appeal in the Ninth Circuit.

2 40. Bullion has dismissed its appeal and will proceed in this forum.

3 41. A special and confidential relationship exists between the parties
4 because they or their predecessors-in-interest are partners to joint venture
5 agreements, including the 1979 Agreement, because Bullion is a third-party
6 beneficiary of the 2019 Nevada Gold Mines, LLC joint venture implementation
7 and operating agreements, and because Bullion is dependent upon defendants
8 to calculate its royalty, as there is no way for Bullion to independently monitor
9 the basis for the calculation of the royalty that Bullion is owed.

10 42. [REDACTED]

14 43. [REDACTED]

20 44. Goldstrike is no longer considered by Barrick Gold to be a signifi-
21 cant subsidiary of Barrick Gold.

22 45. [REDACTED]

24 46. Upon information and belief, the transactions described above have
25 left Goldstrike, Exploration, and other entities owned or controlled by Barrick
26 Gold that formerly owned mineral properties in the Area of Interest without
27 sufficient assets to pay Bullion's royalty, including Bullion's right to an in-kind
28 royalty or a judgment.

1 47. The retention of royalties by Nevada Gold, Barrick Holding, Explo-
2 ration, and/or Barrick Gold against Bullion would be inequitable and would al-
3 low Nevada Gold, Barrick Holding, Barrick Gold, and Exploration to circumvent
4 the purpose of the 1979 Agreement and would allow Nevada Gold and/or the
5 Barrick Gold corporate family to retain royalties owed to Bullion thorough ma-
6 nipulation of corporate fictions.

7 48. Because of the corporate association and relationship of the defend-
8 ants, the acquisition and ownership of properties within the Area of Interest by
9 any defendant other than Goldstrike, would dictate that those properties are
10 owned in constructive trust for the benefit of Goldstrike. As a result, mineral
11 production from those properties would be subject to Bullion's royalty.

12 49. The existence of trust is essential to effectuation of justice. Nevada
13 Gold, Barrick Gold and any of its subsidiaries holding mineral property inter-
14 ests acquired after 1990 in the original Subject Property or the Area of Interest
15 must hold those royalties in trust in favor of Bullion and should pay over all
16 such royalties to Bullion.

17 50. In addition, Goldstrike is, and was at all times relevant hereto, in-
18 fluenced and governed by Barrick Gold and Exploration.

19 51. There is a unity of interest and ownership such that Goldstrike and
20 Barrick Gold and Exploration are inseparable from each other. Upon infor-
21 mation and belief, at times relevant hereto, Goldstrike and Exploration are in-
22 fluenced and governed by the same slate of officers, directors, and management
23 personnel. These officers, directors, and management personnel were all em-
24 ployees of Barrick Gold North America Inc. (BGNA) and had to manage "over a
25 hundred entities," including Exploration and Goldstrike, for Barrick Gold. Wit-
26 nesses designated under Rule 30(b)(6) to represent Goldstrike in the federal
27 lawsuit in fact knew little about Goldstrike, its corporate structure, or its organ-
28 ization within "over a hundred entities" of the Barrick Gold family. Similarly,

1 Rich Haddock, who had previously identified himself as Barrick Gold's general
2 counsel, revealed his position with Goldstrike only when the question of
3 Goldstrike's citizenship became an issue in federal court.

4 52. Further, at times relevant hereto, Barrick Gold exerts ultimate gov-
5 ernance over all other defendants in this matter and all defendants share the
6 exact same interest—obtaining and selling minerals in the Nevada for the profit
7 of Barrick Gold. The defendants have shared, and continue to share assets in-
8 cluding offices, equipment, millsites, employees, vendors, consultants, counsel,
9 trade secrets, know-how, geographic location, intellectual property, research re-
10 sults, and exploration results, and other intellectual and tangible property, all
11 as if they were the same company.

12 53. In addition, Goldstrike failed to observe corporate formalities—in-
13 cluding during the period Bullion filed its suit in federal court—by not holding
14 the annual meeting or other board meetings called for by law and under
15 Goldstrike's governing documents and by not registering to do business in Utah,
16 where Goldstrike asserts that it maintained its corporate headquarters.

17 54. Goldstrike's sole shareholder, Exploration, not Goldstrike's nominal
18 officers or directors, had control over Goldstrike's activities. In 2009, Explora-
19 tion "approved, ratified and made the acts and lawful deeds of the Corporation,"
20 "all actions taken by the directors of the Corporation on behalf of and in the
21 name of the Corporation," and "each and all of the acts of the officers of the Cor-
22 poration." (BAR-J0002222.)

23 55. Although Goldstrike now claims that its principal officers and head-
24 quarters are in Salt Lake City, Utah, Goldstrike's bylaws state that Goldstrike's
25 principal office is in Canada, where Barrick Gold and Exploration are based.

26 56. Rather than keep separate and identify which Barrick entity is tak-
27 ing what actions, Barrick regularly advertises its achievements, including an-
28 nouncements concerning production or acquisitions within the area of interest,

1 as the achievements of “Barrick.”

2 57. Facts are such that adherence to the corporate fiction of separate
3 entities under the circumstances would sanction a fraud or promote injustice,
4 for several specific reasons:

5 a. It would allow defendants to shield themselves from
6 Goldstrike’s liabilities, while diverting the benefits obtained by
7 Goldstrike through its predecessor’s assumption of the 1979 Agree-
8 ment. Specifically, defendants have attempted to manipulate their
9 corporate structure so that they can argue that only Goldstrike
10 should be liable for royalties in the Area of Interest, even though
11 the other defendants are operating in the Area of Interest, benefit-
12 ting from the Area of Interest, and benefitting from Bullion’s exit
13 from the Area of Interest after 1979.

14 b. Injustice will result if defendants are allowed to shed their
15 obligations (or significantly diminish their obligations) by merely
16 creating new corporations to acquire, operate, and mine mineral
17 properties adjacent to Goldstrike, and in the Area of Interest, as a
18 method to avoid paying royalties from properties that would other-
19 wise be subject to the Bullion’s royalty.

20 c. Defendants Goldstrike, Exploration, and Barrick Gold also
21 committed fraud in concealing from Bullion the ownership and pro-
22 duction of mineral properties within the area of interest by Barrick
23 Gold subsidiaries other than Goldstrike. These defendants knew
24 that Bullion was relying on Goldstrike to provide information about
25 all of the mineral interests and production within the Area of Inter-
26 est to which Bullion claims a royalty. Defendants also knew that
27 Bullion disagreed with Goldstrike’s position that a party bound by
28 the 1979 Agreement could escape the obligation to pay Bullion’s

1 royalty merely by arranging for the original Subject Property or
2 property in the Area of Interest to be held by another entity.
3 Goldstrike, Exploration, and Barrick Gold mutually benefited from
4 enlisting Exploration and/or another Barrick Gold subsidiary—
5 other than Goldstrike, who was in litigation with Bullion—to own
6 and conduct mining operations on property within the Area of Inter-
7 est without disclosing that ownership or production to Bullion, and
8 without accounting to Bullion for royalties on that production.

9 d. As set forth herein, recognition of a separate existence be-
10 tween Goldstrike, Barrick Gold, Exploration, and Barrick Nevada
11 Holding LLC would bring about an inequitable result. For example,
12 recognition of separate existence would allow the Barrick corporate
13 family to simultaneously retain the benefits of the 1979 Agreement
14 (including obtaining several valuable mineral properties and the ex-
15 clusion of Bullion from exploration or acquisition activities in the
16 Area of Interest) while avoiding the obligations of the 1979 Agree-
17 ment, including the obligation to pay royalties on mineral produc-
18 tion within the Area of Interest.

19 58. Fraud or injustice would also result from the recent formation of the
20 Nevada Gold Mines joint venture, because, upon information and belief, the
21 Barrick Gold family has acquired a majority ownership interest in Nevada
22 Gold, positioning it to reap substantial profits from production within the Area
23 of Interest while seeking to avoid the obligations that Goldstrike and other Bar-
24 rick Gold subsidiaries owe Bullion from production within the Area of Interest.

25 **FIRST CLAIM FOR RELIEF**
26 **(Declaratory Judgment)**

27 59. Bullion incorporates the foregoing allegations in this claim.

28 60. An actual legal controversy exists between Bullion and defendants

1 as to whether defendants owe Bullion a royalty and/or compensation for produc-
2 tion of minerals from property in the Area of Interest.

3 61. Bullion and defendants have adverse legal positions with respect to
4 their existing legal controversy, and Bullion has a legally protectable interest as
5 to whether it is entitled to a royalty and/or compensation for mining activities
6 and production from within the Area of Interest.

7 62. The existing legal controversy between Bullion and defendants is
8 ripe for judicial determination.

9 63. As a result of the parties' dispute as to whether Bullion is entitled
10 to royalties, Bullion seeks a declaratory judgment from this Court declaring
11 that Bullion is entitled to the royalties from one or more of the defendants for
12 production from within the Area of Interest.

13
14 **SECOND CLAIM FOR RELIEF**
(Breach of Contract)

15 64. Bullion incorporates the foregoing allegations in this claim.

16 65. Defendants are obligated to pay Bullion royalties on the production
17 from mining activities pursuant to the 1979 Agreement as described above.

18 66. Defendants have materially breached the terms of the 1979 Agree-
19 ment.

20 67. Bullion is a third party beneficiary of the agreement to form and the
21 formation of Nevada Gold, since Nevada Gold now holds and/or operates all of
22 the properties from which Bullion is entitled to its royalty as a result of contri-
23 butions by Goldstrike, Exploration and other Barrick entities of all of their
24 properties within the Area of Interest to Nevada Gold.

25 68. Bullion is entitled to a judgment.

26 69. As a direct and proximate result of defendants' breach, Bullion has
27 suffered general and special damages in excess of \$15,000.

28 70. Bullion has also been forced to retain counsel to pursue this action

1 and has incurred attorney's fees as a result of defendants' breach.

2
3 **THIRD CLAIM FOR RELIEF**
4 **(Breach of the Covenant of Good Faith and Fair Dealing)**

5 71. Bullion incorporates the foregoing allegations in this claim.

6 72. Nevada law implies into each contract or agreement a covenant of
7 good faith and fair dealing.

8 73. The 1979 Agreement and other agreements in this matter include
9 an implied, if not express, covenant of good faith and fair dealing.

10 74. The acts and omissions of defendants, as described above, including,
11 but not limited to, having Nevada Gold and corporate relatives of Goldstrike ac-
12 quire mineral interests in the Area of Interest after 1991, have deprived Bullion
13 of benefits that Bullion had bargained for directly with Goldstrike's predeces-
14 sors in interest.

15 75. As a sole, direct and proximate result of the foregoing, Bullion has
16 been damaged in a sum in excess of \$15,000.

17 76. Bullion has also been forced to retain counsel to pursue this action
18 and has incurred attorney's fees as a result of defendants' breach.

19 **FOURTH CLAIM FOR RELIEF**
20 **(Unjust Enrichment)**

21 77. Bullion incorporates the foregoing allegations in this claim.

22 78. Bullion allowed defendants and defendants' predecessors in interest
23 to explore and mine in areas where Bullion had established claims and re-
24 frained from further exploration and mining activities in the Area of Interest as
25 described above.

26 79. Defendants and defendants' predecessors in interest accepted title
27 to Bullion's mineral properties in 1979, including both patented and unpatented
28 mining claims, and Bullion's agreement not to prospect or acquire additional
mineral properties within the Area of Interest. In exchange defendants and

1 their predecessors agreed to pay a royalty to Bullion based on a production from
2 the Subject Property and in exchange for agreeing to pay Bullion the same roy-
3 alty based on production from mineral properties acquired thereafter within the
4 Area of Interest. Defendants will be greatly and unjustly enriched if they are
5 allowed to receive the benefits of the 1979 Agreement without paying the con-
6 sideration therefor, which is Bullion's AOI Royalty.

7 80. In exchange for relinquishment of such property rights and explora-
8 tion and mining rights pursuant to the Agreement, Bullion expected to be paid
9 and is entitled to be paid its royalty for production from the Area of Interest .

10 81. Bullion has not been paid for the amount it has enriched defend-
11 ants.

12 82. Defendants have been unjustly enriched by Bullion.

13 83. Bullion is entitled to compensation for the amount defendants have
14 been unjustly enriched.

15 84. Bullion has also been forced to retain counsel to pursue this action
16 and has incurred attorney's fees as a result of defendants' actions.

17 **FIFTH CLAIM FOR RELIEF**
18 **(Fraudulent Conveyance – NRS 112)**

19 85. Bullion incorporates the foregoing allegations in this claim.

20 86. Goldstrike, Exploration, and other entities owned or controlled by
21 Barrick Gold transferred property (including, but not limited to mineral proper-
22 ties) to Nevada Gold, after the claims in this matter arose, either:

23 a. With actual intent to hinder, delay, or defraud Bullion;

24 b. Without receiving a reasonably equivalent value in exchange
25 for the transfer or obligation, Goldstrike, Exploration, and other entities
26 owned or controlled by Barrick Gold engaged in transactions for which
27 the remaining assets of Goldstrike, Exploration, and other entities owned
28 or controlled by Barrick Gold were unreasonably small in relation to the

1 transaction; or

2 c. Without receiving a reasonably equivalent value in exchange
3 for the transfer, and Goldstrike, Exploration, and other entities owned or
4 controlled by Barrick Gold believed, or reasonably should have believed
5 that Goldstrike, Exploration, and other entities owned or controlled by
6 Barrick Gold would incur debts beyond their ability to pay as they became
7 due.

8 87. Such transfers of property from Goldstrike, Exploration, and other
9 entities owned or controlled by Barrick Gold to Nevada Gold Mines, LLC,
10 should be rescinded and/or voided as fraudulent conveyances pursuant to NRS
11 112.010 *et seq.*

12 88. Bullion has also been forced to retain counsel to pursue this action
13 and has incurred attorney's fees as a result of defendants' actions.

14 **SIXTH CLAIM FOR RELIEF**
15 **(Accounting)**

16 89. Bullion incorporates the foregoing allegations in this claim.

17 90. Bullion seeks an accounting of all royalties owed to Bullion for min-
18 ing activities of defendants in the Area of Interest.

19 91. Bullion has made a demand upon Goldstrike, and hereby makes a
20 demand upon Nevada Gold, Exploration, Barrick Gold, and Barrick Holding, to
21 provide accounting records for defendants' mining activities in the Area of In-
22 terest.

23 92. Bullion seeks an order from this Court directing defendants to pro-
24 vide an accounting of their mining activities in the Area of Interest.

25 93. Bullion has also been forced to retain counsel to pursue this action
26 and has incurred attorney's fees as a result of defendants' actions.

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11. As a further remedy, Bullion reserves the right to amend the complaint to hold all defendants liable for a judgment against Nevada Gold Barrick Goldstrike, or Exploration, if any of them lacks assets sufficient to satisfy the judgment.

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Dated this 8th day of February, 2021.

ROBISON, SHARP, SULLIVAN & BRUST, P.C.

By: /s/ Clayton R. Brust

CLAYTON P. BRUST (SBN 5234)
KENT ROBISON (SBN 1167)
71 Washington Street
Reno, Nevada 89503

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Abraham G. Smith

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway,
Suite 600
Las Vegas, Nevada 89169

Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I certify that on 8th day of February, 2021, I electronically filed and served the foregoing “Third Amended Complaint” through the Court’s electronic filing system upon all parties on the master e-file and serve list.

/s/ Emily D. Kapolnai
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT 1

EXHIBIT 1

65562

AGREEMENT

THIS AGREEMENT is made and entered into as of the 10th
day of May, 1979 by and between the following parties:

BULLION MONARCH COMPANY, a Utah corporation (BULLION);

POLAR RESOURCES CO., a Nevada corporation (POLAR);

UNIVERSAL GAS (MONTANA), INC., a Montana corporation,
and UNIVERSAL EXPLORATIONS, LTD., a Canadian corporation
(UNIVERSAL);

CAMSELL RIVER INVESTMENTS, LTD., a Canadian corporation
(CAMSELL);

LAMBERT MANAGEMENT LTD., a Canadian corporation (LAMBERT);
and

ELTEL HOLDINGS LTD., a Canadian corporation (ELTEL);

W I T N E S S E T H:

WHEREAS the parties hereto would all profit from the
mining of and production of certain mining properties located in
the Lynn Mining District, Eureka County, Nevada, more fully des-
cribed in Exhibit A-1 attached hereto and incorporated herein by
reference, hereinafter collectively referred to as the "Subject
Property;" and

WHEREAS the parties have interest in exploring a wider
range of mineral properties in which the Subject Property is em-
bedded, hereinafter referred to as the "Area of Interest," more
fully described in Exhibit A-2 attached hereto and incorporated
herein by reference; and

WHEREAS the parties hereto are desirous of developing the
Subject Property's mineral potential by building adequate milling
facilities and developing a mine ("the Project"); and

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WHEREAS BULLION purports to own a royalty interest in and to the Subject Property as is more fully set forth in Exhibit A-1; and

WHEREAS POLAR purports to own a 100% interest in and to part of the Subject Property as is more fully set forth in Exhibit A-1, subject to possible outstanding interests and royalties, purports to own a 100% interest in and to other portions of the Subject Property as is more fully set forth in Exhibit A-1, and has under a Lease and Option a 77½% interest to other portions of the Subject Property; and

WHEREAS CAMSELL, LAMBERT and ELTEL are interrelated organizations acting in concert as to the Subject Property, collectively being referred to hereinafter as "CAMSELL" unless specifically referred to otherwise, and have invested monies in the development of the Subject Property to date, their interest and relationship to the Project being governed by that certain Letter Agreement with POLAR dated March 14, 1979, as amended by the letters of March 16, 1979, April 6, 1979 and April 10, 1979, attached thereto, all attached hereto as Exhibit B; and

WHEREAS UNIVERSAL GAS (MONTANA), INC. is presently financing further development of the mining and production potential of the Subject Property, primarily for the production of precious metals basically under the terms of that certain Agreement with POLAR dated March 14, 1979 attached hereto as Exhibit C; and

WHEREAS UNIVERSAL EXPLORATIONS, LTD. is prepared and able to guarantee the financial obligations of UNIVERSAL GAS (MONTANA) INC. contained herein, both corporations will be collectively referred to as UNIVERSAL herein with the understanding amongst the

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parties hereto that UNIVERSAL GAS (MONTANA), INC. will be the active participant referred to as UNIVERSAL while any reference to UNIVERSAL EXPLORATIONS, LTD. under the collective term UNIVERSAL speaks only to its financial backing of the UNIVERSAL obligations recited herein;

NOW THEREFORE, in consideration of the conditions, covenants, promises, obligations, payments and agreements herein contained, the parties agree as follows:

1. SOLE AGREEMENT: That as between the parties hereto this Agreement shall be the sole and only agreement governing the ownership, operations and payment from the Subject Property, cancelling, revoking, rescinding and terminating any and all other deeds, conveyances, contracts or agreements between the parties hereto, or any combination thereof, affecting the Subject Property, except any agreement that may exist between CAMSELL, LAMBERT and ELTEL as to investment in Subject Property development and divisions of proceeds received therefrom, and except any agreement, contract or deed specifically preserved by the terms hereof. Should the terms of any agreement, letter agreement or other document or understanding preserved by specific reference herein be in conflict with this Agreement the terms of this Agreement shall control.

2. OWNERSHIP OF SUBJECT PROPERTY: That as between the parties hereto it is understood and agreed that the ownership of the Subject Property as presently constituted is as set forth in Exhibit A attached hereto, subject only to the terms and conditions of this Agreement specifically referred to herein. In addition, it is understood, agreed and warranted amongst the parties hereto that except

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for agreements, deeds and other documents specifically mentioned herein that none of the parties hereto, individually, in combination or collectively, have conveyed or encumbered the Subject Property.

A. Simultaneously herewith, BULLION shall execute and deliver a Grant Deed to UNIVERSAL conveying all of its right, title and interest in the Subject Property to UNIVERSAL. Such interest of BULLION conveyed to UNIVERSAL shall be subject to the payment provisions of Paragraph 4, infra.

B. Simultaneously herewith, POLAR shall execute and deliver a Grant Deed to UNIVERSAL conveying all of its right, title and interest in the Subject Property to UNIVERSAL, subject to the terms and conditions of the March 14, 1979 POLAR - UNIVERSAL Agreement.

C. Simultaneously herewith, CAMSELL shall execute and deliver a Quitclaim Deed to UNIVERSAL conveying and quitclaiming all of its right, title and interest in the Subject Property to UNIVERSAL.

D. At all times pertinent hereto, UNIVERSAL shall have the right to pledge or otherwise hypothecate the titles to any portions, or the whole of, the Subject Property for the purpose of obtaining financing for development of the Subject Property, except that no more than a total of FIFTY PERCENT (50%) of the then current market value of such property shall be so hypothecated or encumbered. At the time, under the March 14, 1979 Agreement, Exhibit C, UNIVERSAL reaches the "earning point", its conveyance to POLAR of 50% interest shall be unencumbered.

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3. UNIVERSAL AS OPERATOR: That on March 14, 1979 POLAR and UNIVERSAL entered into an Agreement, a copy of which is attached hereto as Exhibit C and incorporated herein by reference, whereby UNIVERSAL, under the terms and conditions thereof, was to become the sole and only operator of the mineral production from the Subject Property as of March 1, 1979, and that all of the parties hereto agree to the terms of said Agreement allowing UNIVERSAL the sole and only control over further development and production from the Subject Property pursuant to the March 14, 1979 Agreement and ratify the same as if they had been signatory thereto.

4. PAYMENTS TO BULLION:

A. Commencing May 1, 1979, UNIVERSAL shall pay to BULLION an advance minimum royalty of \$2,500.00 each and every month through October of 1979 or until gross production sales from the Subject Property have reached the amount of \$62,500.00 per month, whichever comes first.

B. Commencing on November 1, 1979, UNIVERSAL shall pay to BULLION an advance minimum royalty of \$5,000.00 each and every month until gross production sales from the Subject Property has reached the amount of \$125,000.00 per month, or until BULLION has received an aggregate of \$250,000.00 under these subparagraphs, A and B.

C. BULLION shall receive a FOUR PERCENT (4%) gross smelter return from production from the Subject Property (based on 100% operating interest in UNIVERSAL, otherwise prorated) until BULLION has received an aggregate of \$500,000.00 under these subparagraphs, A, B and C.

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D. Thereafter BULLION shall receive a TWO PERCENT (2%) gross smelter return royalty from production from the Subject Property (based on 100% operating interest in UNIVERSAL, otherwise prorated) until BULLION has received an aggregate of \$1,000,000.00 under these subparagraphs, A, B, C and D.

E. Thereafter BULLION shall receive a ONE PERCENT (1%) gross smelter return royalty from production from the Subject Property (based on 100% operating interest in UNIVERSAL, otherwise prorated).

"Gross smelter return," as used above, shall mean the amount of earned revenues, as used in accordance with generally accepted accounting principles, payable to UNIVERSAL by any smelter or other purchaser of metals, ores, minerals or mineral substances, or concentrates produced therefrom for products mined from the Subject Property.

Upon SIXTY (60) days' written notice by BULLION to UNIVERSAL, BULLION may elect to take any monthly production royalty in kind but will be totally responsible for all loading and transportation and the costs thereof. BULLION agrees not to materially interfere with UNIVERSAL's operations should it elect to receive payment in kind, and will hold all the remaining parties hereto harmless from its actions in loading and transporting the in kind payments.

All advance royalty payments shall be due on the first day of each month and all production royalties shall be due no later than FORTY-FIVE (45) days after the date payment for production sales is received by UNIVERSAL.

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5. OBLIGATIONS OF BULLION AND POLAR: BULLION and POLAR shall assume and retain all obligations that they have independently incurred by virtue of their activities on and for the Subject Property prior to the date of this Agreement and, in particular, BULLION shall assume and retain the obligation of that certain Deed of Trust made in favor of Ira J. Jaffee, Trustee, as Beneficiary, recorded in the Official Records of Eureka County, Nevada, Book 41, Page 362. At all times pertinent hereto, UNIVERSAL shall have the unqualified right to direct any and all funds due BULLION or POLAR hereunder to remove any obligations of BULLION or POLAR, respectively, secured by the Subject Property, or any portion thereof, and such will be credited toward the payment schedule due BULLION or POLAR. See Paragraph 4, supra.

6. PURCHASE OF BULLION'S INTEREST: That at the time BULLION has received an aggregate of \$1,000,000.00 under the terms and conditions of Paragraph 4, supra, BULLION will have been deemed to have sold and UNIVERSAL and POLAR deemed to have purchased all of BULLION's right, title and interest in the Subject Property (50% each, subject to the terms and conditions of the March 14, 1979 Agreement, Exhibit C) and forever relieving UNIVERSAL and POLAR from any contractual commitment to BULLION by virtue of UNIVERSAL's or POLAR's actions or operations on the Subject Property, save and except for the ONE PERCENT (1%) gross smelter return royalty from production from the Subject Property (based on 100% operating interest in UNIVERSAL, otherwise prorated) set forth in Paragraph 4(E), supra. At that time, UNIVERSAL and POLAR will execute and deliver

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to BULLION a Royalty Deed forever evidencing such royalty interest, ONE-HALF PERCENT (1/2%) being chargeable each against UNIVERSAL and POLAR.

7. DEFAULT OF OBLIGATIONS TO BULLION: If, at any time, UNIVERSAL is in default of its payment obligations to BULLION, BULLION, upon FORTY-FIVE (45) days' written notice to all of the parties hereto, may terminate this Agreement and demand that UNIVERSAL execute and deliver to BULLION a Quitclaim Deed of all of its right, title and interest to that portion of the then Subject Property that is specifically listed in Exhibit A-1 attached hereto, but not the additional properties added to the Subject Property list subsequent to the date of this Agreement. During the notice period, UNIVERSAL, or any other party hereto not BULLION, or anyone on their behalf, may pay such obligation to BULLION and cure such default.

8. PRODUCTION EXPENSE OVERRUN: Pursuant to the terms of the Letter Agreement between POLAR and CAMSELL dated March 14, 1979, Exhibit B, POLAR and CAMSELL agree to share in cost overruns incurred by UNIVERSAL in bringing the Project into production should UNIVERSAL's initial development costs prior to production exceed ONE MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$1,250,000.00), or should UNIVERSAL's initial development costs and production costs exceed \$1,250,000.00 at any time after production commences but production expenses exceed production payments or revenues.

The parties agree to share in cost overruns in excess of \$1,250,000.00 commitment of UNIVERSAL in the following percentages:

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UNIVERSAL 50%

POLAR-CAMSELL 50%

Except as herein outlined, the terms, conditions and penalties for cost overruns and the non-participation in such overruns are governed by Clause 10(D), Schedule B, POLAR - UNIVERSAL Agreement of March 14, 1979.

9. DIVISION OF PROCEEDS: The proceeds of production shall be governed by the terms of this Agreement only (except for the CAMSELL, LAMBERT and ELTEL arrangements). As operator under the March 14, 1979 Agreement (see Paragraph 3, supra), UNIVERSAL shall have the right to pay all normal operating and production expenses, including insurance and taxes (excepting income taxes accruing to the individual parties hereto, but specifically including net proceeds of mine taxes, real and personal property taxes associated with mining and income taxes accruing to the venture), pursuant to normal and usual accounting practices and the terms of the March 14, 1979 Agreement from production payments received. In addition, UNIVERSAL shall be able to treat as production expenses and deduct from production payments received all rentals, advance royalties and production royalties paid to BULLION, the Poulsen Group and any others. The amounts received from products produced from the Subject (production payments) less the production expenses, as defined herein and in the March 14, 1979 Agreement between POLAR and UNIVERSAL, shall be the net production receipts.

As between the parties hereto, the net production receipts shall be divided as follows:

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A. BULLION: none, being only entitled to the payments set forth above in Paragraph 4;

B. UNIVERSAL: FIFTY PERCENT (50%); and

C. POLAR, CAMSELL: FIFTY PERCENT (50%), pursuant to that Letter Agreement between POLAR and CAMSELL dated March 14, 1979, Exhibit B.

Nothing herein shall be construed as prohibiting POLAR-CAMSELL from taking their interest in kind provided that they give UNIVERSAL SIXTY (60) days' written notice of such election. POLAR-CAMSELL will be totally responsible for all loading and transportation and the costs thereof. POLAR-CAMSELL will not materially interfere with UNIVERSAL's operations should it elect to receive payment in kind and will hold all the remaining parties hereto harmless from its actions in loading and transporting the in kind payments. It is understood and agreed that all such in kind payments are net, after deduction of the proportionate amount of mining and operation costs.

10. TERMINATION BY UNIVERSAL: UNIVERSAL's participation in the Project is governed by the terms and conditions of the POLAR - UNIVERSAL Agreement of March 14, 1979, Exhibit C, except as specifically modified herein. Upon fulfilling its obligations thereunder, UNIVERSAL has the right to terminate its position as Project Operator and to terminate its further participation in Project development and expenses thereof. Such termination is governed by the terms and conditions of the March 14, 1979 UNIVERSAL - POLAR Agreement and, in particular, Schedule B attached thereto.

11. ADDITIONAL PROPERTY ACQUISITIONS: UNIVERSAL, as operator, shall have the exclusive right to acquire additional

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mineral properties within the Area of Interest on behalf of the parties hereto, be such acquisition by virtue of the rights and privileges under the 1872 Mining Law, or the leasing or purchase of private lands and minerals, or unpatented mining claims. All parties hereto agree to immediately quitclaim and assign to UNIVERSAL any and all other real property or interest in such that they may have within the Area of Interest, Exhibit A-2, as of the date of this Agreement, subjecting the same to the terms and conditions of this Agreement, excepting any interest of BULLION in and to those properties presently being worked by Western States Minerals (Pancana).

Upon acquiring such properties within the Area of Interest, UNIVERSAL shall offer to include such into the Subject Property upon payment by POLAR-CAMSELL of FIFTY PERCENT (50%) of all acquisition costs incurred in acquiring such properties. Acquisition costs shall include, but are not limited to, purchase price, rental fees, real estate or finder's commissions, legal fees, closing costs, title examinations, appraisal fees and costs incurred by UNIVERSAL in otherwise evaluating the property to be acquired.

Should POLAR-CAMSELL reject such offer or fail to pay or reach agreement for paying such acquisition costs within FORTY-FIVE (45) days of such offer by UNIVERSAL, then such properties within the Area of Interest shall not become part of the Subject Property as they apply to POLAR-CAMSELL and will remain the sole property of UNIVERSAL without any obligations to POLAR-CAMSELL, but subject to the royalty interest of BULLION.

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However, should POLAR accept such offer and pay or reach an agreement with UNIVERSAL for paying such acquisitions costs, the newly acquired properties shall become part of the Subject Property and will be treated thereafter under the terms of this Agreement pertaining to the Subject Property.

12. POULSEN LEASE AND OPTION: The parties hereto recognize the Lease and Option of POLAR with the Poulsens, a copy of which is attached hereto as Exhibit D. UNIVERSAL shall make all payments due thereunder and shall credit such as a development or production expense.

While under Lease, the Poulsen properties shall be, and are, part of the Subject Property, however, at any time, UNIVERSAL may elect to exercise the purchase option. Upon doing so, UNIVERSAL shall offer such to POLAR-CAMSELL under the terms of Paragraph 12, supra. Failure of POLAR-CAMSELL to participate in the acquisition (purchase) costs shall remove such properties from Subject Property status as the same applies to POLAR-CAMSELL.

13. TERM: The term of this Agreement, as it affects the continuing contractual relationships between the parties hereto, is for a period of NINETY-NINE (99) years commencing on the date hereof, unless sooner terminated, surrendered or forfeited.

14. TITLE PERFECTION: The parties hereto recognize that title to the Subject Property, or portions thereof, may contain certain imperfections, clouds thereon or outstanding interests that may require acquisition, clearing or otherwise perfecting. UNIVERSAL shall, in its discretion, seek out such imperfections and cure the same. All expenses incurred by UNIVERSAL in investi-

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gating title to the Subject Property from March 1, 1979, and curing imperfections or acquiring outstanding interests in the same shall be treated as a development or production expense by UNIVERSAL pursuant to the March 14, 1979 POLAR - UNIVERSAL Agreement.

15. INSPECTION, RECORDS: At all times pertinent hereto, the non-operating parties shall have the right to reasonable inspection of the Subject Property and all geological and production records upon giving FIVE (5) days' written notice to UNIVERSAL. Such inspection shall be at the Subject Property or at any offices of UNIVERSAL in the Elko-Carlin, Nevada area. Personal inquiry by the parties hereto directly to UNIVERSAL shall be made only to the following UNIVERSAL officers and employees, and no others:

Joseph A. Mercier
Dan Mercier
Don Hargrove

or their nominees.

Monthly, on the monthly anniversary of this Agreement, UNIVERSAL shall prepare and deliver to the parties hereto a summary report of development on the Subject Property, including building construction, geological finds, etc., and setting forth production and development expenditures.

16. NOTICES: All notices required herein shall be in writing by certified or registered mail, (United States or Canada, as the case may be), return receipt requested (or the Canadian equivalent of such service), to the addresses listed below. Service of such notice is to be deemed accomplished as of the date of mailing:

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RENO AND ELKO, NEVADA

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BULLION MONARCH COMPANY
Attention: R. D. Morris
Henderson Bank Building
Elko, NV 89801

UNIVERSAL GAS (MONTANA), INC.
Attention: Joe Mercier, President
640 8th Avenue, S. W.
Calgary, Alberta
CANADA T2P 1G7

With a copy to: UNIVERSAL GAS (MONTANA), INC.
Attention: John C. Miller, Esq.
Blohm Building, Suite 201
Elko, NV 89801

POLAR RESOURCES CO.
Attention: C. Warren Hunt
1119 Sydenham Road, S. W.
Calgary, Alberta
CANADA T2T 0T5

CAMELL RIVER INVESTMENTS
Attention: K. H. Lambert
808 Home Oil Tower
324 8th Avenue, S. W.
Calgary, Alberta
CANADA T2P 2Z2

LAMBERT MANAGEMENT LTD.
Attention: K. H. Lambert
808 Home Oil Tower
324 8th Avenue, S. W.
Calgary, Alberta
CANADA T2P 2Z2

ELTEL HOLDINGS LTD.
Attention: R. H. Lambert
808 Home Oil Tower
324 8th Avenue, S. W.
Calgary, Alberta
CANADA T2P 2Z2

17. RECORDATION: This Agreement may be recorded into the Official Records of either Eureka County of Elko County, Nevada, or both, by any one of the parties hereto.

18. BINDING EFFECT: The terms and conditions of this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto.

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19. ASSIGNABILITY: The respective positions and interests of the parties hereto shall be freely assignable except that such assignment shall not be binding on or affect the remaining parties hereto in any manner, unless and until such assignment is noted in writing to UNIVERSAL, or any successor Operator.

IN WITNESS WHEREOF, the parties hereto set their hands as of the day and year first above written.

BULLION MONARCH COMPANY, a Utah corporation

BY: R.D. Monic
TITLE: PRESIDENT

POLAR RESOURCES CO., a Nevada corporation

BY: W.M. Smith
TITLE: President

UNIVERSAL GAS (MONTANA), INC., a Montana corporation

BY: [Signature]
TITLE: PRESIDENT

CAMELL RIVER INVESTMENTS ^{Ltd.} Inc., a Canadian corporation

BY: H.H. Lambert
TITLE: President


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LAMBERT MANAGEMENT LTD., a Canadian corporation

BY: K.H. Lambert 
TITLE: President

ELTEL HOLDINGS LTD., a Canadian corporation

BY: K.H. Lambert 
TITLE: Director & Secretary

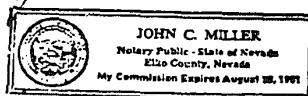
UNIVERSAL EXPLORATIONS, LTD. a Canadian corporation

BY: [Signature]
TITLE: Treasurer 

STATE OF Nevada)
COUNTY OF Elko) SS.

On May 11, 1979, personally appeared before me, a Notary Public, R.D. Moins, a duly qualified and acting officer of BULLION MONARCH COMPANY, who acknowledged to me that he executed the above instrument in that capacity.

[Signature]
NOTARY PUBLIC



-16-

BOOK 71 PAGE 24

HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

05/11/79

PROVINCE
STATE OF ALBERTA)
COUNTY OF _____) SS.

On _____, 1979, personally appeared before
me, a Notary Public, C. WARREN HUNT, a duly qualified and
acting officer of POLAR RESOURCES CO., who acknowledged to me that
he executed the above instrument in that capacity.

NOTARY PUBLIC

PROVINCE
STATE OF ALBERTA)
COUNTY OF _____) SS.

On MAY 28, 1979, personally appeared before
me, a Notary Public, Joseph A. Mercer, a duly qualified and
acting officer of UNIVERSAL GAS (MONTANA), INC., who acknowledged
to me that he executed the above instrument in that capacity.

NOTARY PUBLIC

PROVINCE
STATE OF ALBERTA)
COUNTY OF _____) SS.

On MAY 17, 1979, personally appeared before
me, a Notary Public, KENNETH H. LAMBERT, a duly qualified and
acting officer of CAMSELL RIVER INVESTMENTS, INC., who acknowledged
to me that he executed the above instrument in that capacity.

NOTARY PUBLIC

-17-

BOOK 71 PAGE 25

05/11/79


HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

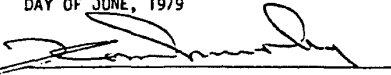
AFFIDAVIT OF EXECUTION

I Susan Lee Nicholl of the City of Calgary, in the Province of Alberta, make oath and say that:

1. I was personally present and did see Mr. C. Warren Hunt named in the within or in annexed instrument who is personally known to me to be the person named therein, duly signed and executed the same for the purposes named therein.
2. That the same was executed at the City of Calgary, in the Province of Alberta and that I am the subscribing witness thereto.
3. That I know the said Mr. C. Warren Hunt and he is, in my belief, of the full age of twenty-one years.

SWORN BEFORE ME AT THE CITY OF CALGARY,
IN THE PROVINCE OF ALBERTA, THIS 7th
DAY OF JUNE, 1979


SUSAN LEE NICHOLL


A Notary Public in and for the Province of Alberta



BOOK 71 PAGE 26

PROVINCE
STATE OF ALBERTA)
COUNTY OF _____) SS.

On MAY 17, 1979, personally appeared before me, a Notary Public, KENNETH H. LAMBERT, a duly qualified and acting officer of LAMBERT MANAGEMENT LTD., who acknowledged to me that he executed the above instrument in that capacity.

[Signature]
NOTARY PUBLIC



PROVINCE
STATE OF ALBERTA)
COUNTY OF _____) SS.

On MAY 17, 1979, personally appeared before me, a Notary Public, KENNETH H. LAMBERT, a duly qualified and acting officer of ELTEL HOLDINGS LTD., who acknowledged to me that he executed the above instrument in that capacity.

[Signature]
NOTARY PUBLIC



PROVINCE
STATE OF ALBERTA)
COUNTY OF _____) SS.

On MAY 28, 1979, personally appeared before me, a Notary Public, Joseph A. Mercier, a duly qualified and acting officer of UNIVERSAL EXPLORATIONS, LTD., who acknowledged to me that he executed the above instrument in that capacity.

[Signature]
NOTARY PUBLIC



-18-

BOOK 71 PAGE 27

05/11/79

HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

EXHIBIT A-2

AREA OF INTEREST

All those lands contained in the Sections and Townships listed below approximately encompassing the area EIGHT (8) miles in a northerly direction, EIGHT (8) miles in a southerly direction, EIGHT (8) miles in an easterly direction and EIGHT (8) miles in a westerly direction from Section 10, Township 35 North, Range 50 East, M.D.B.&M., Eureka County, Nevada.

Township 34 North, Range 49 East
Sections: 1-5, 8-17 and 20-24

Township 35 North, Range 49 East
Sections: 1-5, 8-17, 20-29 and 32-36

Township 36 North, Range 49 East
Sections: 1-5, 8-17, 20-29 and 32-36

Township 37 North, Range 49 East
Sections: 32-36

Township 34 North, Range 50 East
Sections: 1-24

Township 35 North, Range 50 East
Sections: All

Township 36 North, Range 50 East
Sections: All

Township 37 North, Range 50 East
Sections: 31-36

Township 34 North, Range 51 East
Sections: 3-10 and 15-22

Township 35 North, Range 51 East
Sections: 3-10, 15-22 and 27-34

Township 36 North, Range 51 East
Sections: 3-10, 15-22 and 27-34

Township 37 North, Range 51 East
Sections: 31-34

HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

EXHIBIT A-2

BOOK 71 PAGE 28

EXHIBIT A-1

SUBJECT PROPERTY

The following described unpatented and patented mining claims generally located in Sections 1, 2, 10, 11 and 12 of Township 35 North, Range 50 East, M.D.B. & M., Lynn Mining District, Eureka County, Nevada:

<u>Unpatented Claims</u>	<u>Polar</u>	<u>Bullion</u>
Big Jim	100%	Royalty
Big Jim 1 to 31, inclusive	"	"
Cracker Jack	"	"
Cracker Jack 1 to 5, inclusive	"	"
Yellow Rose 6 to 21, inclusive	"	"
Polar 1 to 20, inclusive	"	"
Hill Top	"	"
Hill Top 1 to 2, inclusive	"	"
Hill Top Fractional	"	"
Hill Top 1 to 4 Fractional	"	"
RJV	"	"
Unity 1	"	"
Unity 2	"	"
Badger	"	"
Badger 1	"	"
Compromise 4 to 7, inclusive	"	"
Lamira	"	"
Junction	"	"
Paragon	"	"
Paragon 2	"	"
Paragon 4	"	"
Paragon Fractional	"	"

Patented Claims (Poulsen Lease and Option)

	<u>U.S. Patent No.</u>	<u>U.S. Survey No.</u>	<u>Polar</u>	<u>Bullion</u>
Big Six No. 3	763757	4332	77½%	Royalty
Holt	881735	4422	"	"
July	935874	4528	"	"
Great Divide	945439	4393	"	"
Bald Eagle	046758	4527	"	"

HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

EXHIBIT A-1

BOOK 71 PAGE 29

LAMBERT MANAGEMENT LTD.

Telephone: (403) 233-0047
806 HOME DR. TOWER
324 - 8 AVENUE S.W.
CALGARY, ALBERTA
CANADA T2P 2Z2

Telephone: (403) 454-2671
13718 - 101 AVENUE
EDMONTON, ALBERTA
CANADA T5N 0J7

March 14, 1979

Polar Resources Co.
1119 Sydenham Road, S. W.
Calgary, Alberta
T2T 0T5

Attention: Mr. Warren Hunt

Dear Sirs:

RE: Gold Claims Lynn Mining District
Eureka County, Nevada

As you are aware, since early 1976 Camsell River Investments Ltd. has entered into several agreements with you relating to the Bullion Monarch Company gold claims in Nevada and has also entered into agreements relating to the same properties with Bullion Monarch Company. As a result of these agreements, Camsell and its silent coventurers, Lambert Management Ltd. and Eltel Holdings Ltd. have advanced about \$505,000. U.S. to you and \$300,000. U.S. to Bullion Monarch Company and have expended a further \$10,000. U.S. or so on drilling invoices and other expenses relating to the properties.

Our mutual files on this matter are extensive and the legal determination of the various agreements would undoubtedly take more time and effort to resolve than is prudent under the circumstances. We have always maintained that we do not wish to hamper your efforts to put the properties into production so long as an equitable arrangement can be reached between us. Based on the proposed agreement you have negotiated with Universal Gas (Montana) Inc. (hereinafter called the "Mill Agreement") and our meetings and telephone conversations of March 10, 11, 12 and 13, we believe we have reached an agreement acceptable to you and the parties we represent. This agreement between you and the "Camsell Group" would enable Universal to obtain the interest it has bargained for in the Mill Agreement and would resolve our diverse interests in an amiable fashion.

/2

BOOK 71 PAGE 30

EXHIBIT B

The Agreement is as follows:

- 1) All of the interests of any nature whatsoever of Polar Resources Co. and those of other parties represented by Polar Resources Co. (hereinafter called the "Polar Group") and all of the interests of any nature whatsoever of Camsell River Investments Ltd. and those of the parties represented by Camsell River Investments Ltd. (hereinafter called the "Camsell Group") in "The Mining Properties" as defined in the Mill Agreement shall be pooled and then reallocated 50% to Universal Gas (Montana) Inc. pursuant to the Mill Agreement and 50% collectively to the Polar Group and the Camsell Group (hereinafter called the "Polar-Camsell Group").
- 2) The Camsell Group will receive 100% of the cash flow from the Polar-Camsell Group's 50% interest in the Mining Properties until the Camsell Group has received an amount equivalent to its expenditures relating to the Mining Properties before interest as established by independent audit. This amount is about \$815,000 U.S.
- 3) After the Camsell Group has received the amount indicated in paragraph 2 above, the Polar Group will receive 100% of the cash flow from the Polar-Camsell Group's 50% interest in the Mining Properties until the Polar Group has received an amount equivalent to its expenditures relating to the Mining Properties before interest as established by independent audit. This amount is about \$450,000. U.S.
- 4) After the Polar Group has received the amount indicated in paragraph 3 above, the Polar Group and the Camsell Group will split the cash flow from the Polar-Camsell Group's 50% interest in the Mining Properties on a 50-50 basis until the Camsell Group has received an amount equivalent to the amount of interest the Camsell Group would have paid to its banker calculated on all Camsell Group advances to Polar Resources Co. and Bullion Monarch Company from the dates of advance at the Canadian Imperial Bank of Commerce prime rate from time to time plus 2% per annum, compounded semi annually. Any cash received by the Camsell Group pursuant to this agreement would be credited to the "phantom bank account" on the date of receipt in order to determine the amount to be ultimately received by the Camsell Group pursuant to this paragraph 4.
- 5) After the Camsell Group has received the amount calculated pursuant to paragraph 4 above, the Polar-Camsell Group's interests shall be divided and an undivided 30% of the interest shall be transferred to the Camsell Group and an undivided 70% shall be transferred to the Polar Group.

/3

6) Title to the Polar-Camsell Group's interest in the Mining Properties shall be held in trust by Polar Resources Co. pursuant to the terms of this Agreement and this Agreement or its successor shall be filed against the title to the Mining Properties in the appropriate offices in the state of Nevada. Polar shall deliver to the Camsell Group a legal opinion from a Nevada attorney stating that the terms and conditions of this Agreement are enforceable by the Camsell Group as against Polar Resources Co. and that the Camsell Group's interests have been adequately registered to protect its interests as against third parties.

7) The proceeds Polar Resources Co. receives from Universal Gas (Montana) Inc. on the sale of the assets listed in the Mill Agreement shall be distributed as follows:

- a) The Polar Group shall receive 100% of the proceeds from the sale of assets acquired after December 31, 1976.
- b) The Camsell Group shall receive 80.4% of the proceeds from the sale of assets acquired prior to January 1, 1977 and the Polar Group shall receive the balance.
- c) Polar Resources Co. shall account to the Camsell Group for any assets held on December 31, 1976 which have been disposed of by Polar Resources Co. subsequent to December 1, 1976 but prior to the execution of the Mill Agreement. The Camsell Group shall receive an amount equal to 80.4% of such disposition proceeds from Polar Resources Co. and the source of funds for such payment shall be the Polar Group's share of the proceeds of the sale of assets pursuant to the Mill Agreement.

8) The Polar-Camsell Group recognizes a fee of \$1,500. per month payable to Polar Resources Co. from the cash flow generated by the mill for the services of Warren Hunt from the date of commencement of milling operations and also recognizes the need to employ a full time representative at the mine as soon as gold production commences in meaningful amounts.

9) In the event of cost overruns beyond the \$1,250,000. U.S. stated in the Mill Agreement, the Polar-Camsell Group acknowledges that it will be responsible for 50% of such overruns. These overruns shall be allocated as between the Polar Group and the Camsell Group as follows:

- a) For exploration, mine development, and mine operation expenses on the Big Jim claims 24 and 25 and for mill development expenses related to that mine, 50% shall be paid by the Polar Group and 50% shall be paid by the Camsell Group.

- b) For all other expenses 70% shall be paid by the Polar Group and 30% shall be paid by the Camsell Group.

10) This Agreement is subject to the execution of the Mill Agreement and is subject to revision of the method contemplated in paragraph 1 to arrive at the interests outlined in paragraphs 2, 3, 4 and 5 if subsequent investigation reveals that the tax consequences of such method are adverse. The intent is that the Agreement will be structured so as to minimize adverse tax implications in Canada and the United States for all parties concerned while at the same time arriving at the same distribution of cash flow from the Mining Properties.

11) This Agreement shall be interpreted in accordance with the laws of the Province of Alberta.

12) Each of the parties shall execute any further agreements required by legal counsel for any party to implement the terms or intent of this Agreement.

If you agree with the above terms and conditions please indicate your acceptance on the copy of this letter enclosed.

Yours very truly,

Lambert Management Ltd.

K. H. Lambert
K. H. Lambert
President

/mjm
encl:

Accepted this 14th day of March, 1979

Polar Resources Ltd.

C. Warren Hunt
C. Warren Hunt
President

Accepted this 14th day of March, 1979

Eltel Holdings Ltd.

K. H. Lambert
K. H. Lambert
Secretary

Accepted this 14th day of March, 1979

Camsell River Investments Ltd.

K. H. Lambert
K. H. Lambert
President

LAMBERT MANAGEMENT LTD.

Telephone: (403) 233-0047
808 HOME OIL TOWER
324 - 8 AVENUE S.W.
CALGARY, ALBERTA
CANADA T2P 2Z2

Telephone: (403) 454-2671
13716 - 101 AVENUE,
EDMONTON, ALBERTA
CANADA T5N 0J7

March 16, 1979

Polar Resources Co.
1119 Sydenham Road, S. W.
Calgary, Alberta
T2T 0T5

Attention: Mr. Warren Hunt

Dear Sirs:

RE: Gold Claims - Lynn Mining District
Eureka County, Nevada

Further to our letter of March 14, 1979 and the writer's meeting with your Messrs. Hunt and Ross Hamilton on March 14, 1979, we wish to confirm that the agreement contained in the said letter is amended by adding the following:

- 9.1(a) Any funds advanced pursuant to sub paragraph 9(a) shall be repaid pro rata from the Polar-Camsell Group's first cash flow from the mill prior to the commencement of payments to the Camsell Group pursuant to paragraph 2.
- 9.1(b) Any funds advanced pursuant to sub paragraph 9(b) shall be repaid pro rata from the Polar-Camsell Group's cash flow from the mill after the obligations to the Camsell Group outlined in paragraph 4 have been satisfied.
- 9.2 The penalty provisions in the Mill Agreement shall apply mutatis mutandis to the Polar Group and the Camsell Group in the event of a default by either Group on an obligation to advance further funds pursuant to paragraph 9.

If you agree with the above additional terms and conditions please indicate your acceptance on the copy of this letter enclosed.

Yours very truly,

Lambert Management Ltd.

R.H. Lambert
R. H. Lambert

/mjm
encl:

BOOK 71 PAGE 34

Attachment to: Polar Resources Co.
March 16, 1979

Accepted this day of March, 1979
Polar Resources Co.

C. Warren Hunt
President

Accepted this 16th day of March, 1979
Eltel Holdings Ltd.

K. H. Lambert
K. H. Lambert
Secretary

Accepted this 16th day of March, 1979
Camsel River Investments Ltd.

K. H. Lambert
K. H. Lambert
President

POLAR RESOURCES CO.

1070 SILVER STREET
ELKO, NEVADA 89801
(702) 738-8712

April 6, 1979

Mr. K. H. Lambert
Lambert Management Ltd.
8808, 324 8th Ave. S.W.
Calgary T2P 2Z2

Dear Sir:

Your letter of March 16 1979 is acknowledged and a copy returned herewith signed as requested.

In accordance with our telephone conversation this morning, in which the writer pointed out that clauses 7b and 7c of the letter agreement of March 14, 1979 were unduly broad in that they might be construed to include Polar's assets which had not been acquired by the joint venture nor in the period of the joint venture, April 1 - Nov. 30, 1976, the following is proposed:

Clause 7 subclause b is amended so that the words "prior to Jan. 1, 1977" are replaced by "between April 1, 1976 and November 30, 1976".

Clause 7 subclause c. The meaning of the word "assets" as used in this subclause is understood to mean properties and equipment acquired by the joint venture or charged by Polar to the joint venture so as to establish equity of contributions of the members of the joint venture, that is to say, Polar Resources Co. and Camels River Investments Ltd.

If the foregoing meet with your approval, kindly sign a copy hereof and return for our files.

Yours truly,
Polar Resources Co.

[Signature]
C. Warren Hunt, Pres.

*See qualifications in
letter of April 10/79
Lambert Management Ltd.
per K.H. Lambert*

BOOK 71 PAGE 36

LAMBERT MANAGEMENT LTD.

Telephone: (403) 233-0047
808 HOME OIL TOWER
324 - 8 AVENUE S.W.
CALGARY, ALBERTA
CANADA T2P 2Z2

Telephone: (403) 454-2671
13716 - 101 AVENUE
EDMONTON, ALBERTA
CANADA T5N 0J7

April 10, 1979

Polar Resources Co.
1119 Sydenham Road S.W.
Calgary, Alberta
T2T 0T5

ATTENTION: Mr. Warren C. Hunt

Dear Sirs:

RE: Gold Claims Lynn Mining District
Eureka County, Nevada

Further to your letter of April 6, 1979, we wish to confirm our agreement that clauses 7b and 7c of our letter agreement of March 14, 1979 have not been drafted to contemplate assets to be sold under the Mill Agreement. We agree that the language should be changed.

We are prepared to accept your suggested change for sub clause 7b provided that the 80.4% figure is changed to reflect the actual percentage of the total funds used by Polar between April 1 and November 30, 1976 which was injected by the Camsell Group. Your auditor could provide us with that percentage.

We accept your clarification of the word "assets" in sub clause 7c and would also suggest that the 80.4% figure used in sub clause 7c should be changed to the same percentage as will be used in subclause 7b.

If the foregoing meets with your approval, kindly sign the enclosed copy of this letter and return it for our files.

Yours very truly,
LAMBERT MANAGEMENT LTD.
R.H. Lambert
R.H. Lambert
President

KHL/rs

Enc.

Accepted this 17th day of April, 1979

POLAR RESOURCES LTD.

PER: *W. C. Hunt*

BOOK 71 PAGE 37

EXHIBIT B

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,

Respondents,

BULLION MONARCH MINING, INC,

Real Party in Interest.

Case No. 82370

Electronically Filed
Feb 17 2021 05:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**OPPOSITION TO MOTION TO
DISMISS PETITION**

AND

**COUNTERMOTION FOR A STAY
PENDING DECISION ON WRIT
PETITION**

I. INTRODUCTION

Bullion Monarch Mining, Inc. ("Bullion") is simply endeavoring to delay review of an untenable specific jurisdiction ruling against Canada-based Barrick Gold Corporation ("Barrick Gold"). Despite the present Petition's merit, the district court refused Barrick Gold's motion to stay proceedings and instead continued with merits discovery, the very assertion of jurisdiction over a foreign company that the Constitution forbids. Hoping to postpone the inevitable, Bullion employs its recently-filed Third Amended Complaint ("TAC") as a delay maneuver, claiming that it moots the Petition and robs this Court of jurisdiction. According to Bullion, Barrick Gold must start over again, file another motion to dismiss, receive the same jurisdictional ruling on the same preexisting claims, and file another writ petition – all while Bullion burdens Barrick Gold with expensive and unnecessary discovery in a foreign forum. The law is rightly otherwise.

The Petition is not moot, and the Court should enter a stay and review it. Personal jurisdiction is determined on a claim-by-claim basis, and the TAC did not substantively alter the district court's jurisdictional ruling on the preexisting claims at issue in the Petition. Review is still proper for the erroneous jurisdictional ruling, and doing so will provide effective relief. The Petition has not been rendered meaningless. On the other hand, allowing the district court to exercise jurisdiction over a foreign parent – accompanied by significant and expensive discovery against

an entity that did not purposefully avail itself of this forum – *is* wrongful and ineffective. This Court should stay the lower court proceedings as they pertain to Barrick Gold while it considers the Petition.

II. STATEMENT OF FACTS

The Petition details the facts. Barrick Gold is the ultimate foreign parent company of separately incorporated subsidiaries, which own and operate mines, including in Nevada. Bullion has been engaged in litigation with some of those Nevada subsidiaries over claims that Bullion is owed royalties from an agreement executed in 1979 (the "1979 Agreement"). Bullion's claims arise from this 1979 Agreement; not the corporate structure or transactions of Barrick Gold and its independent subsidiaries.

Bullion commenced the underlying action in December 2018. Bullion's complaint asserted the same five claims it had litigated for nearly a decade. Namely, based upon the 1979 Agreement, Bullion asserted claims for: (1) declaratory judgment; (2) breach of contract; (3) breach of the covenant of good faith and fair dealing; (4) unjust enrichment; and (5) accounting. Because Barrick Gold's contacts with Nevada were based on nothing more than its status as the ultimate foreign parent company of indirect subsidiaries, Barrick Gold immediately moved to dismiss for lack of personal jurisdiction.

Bullion, desperate to improperly keep Barrick Gold in the action, sought and was granted leave to file an amended complaint (the second amended complaint) that included allegations and claims for "constructive trust" and "alter ego and corporate veil-piercing." Yet, Bullion's substantive claims remained unchanged. Thus, Barrick Gold refiled its motion to dismiss for lack of personal jurisdiction.

Subsequently, the district court conducted a hearing on the motion to dismiss, as well as other pending motions to dismiss that argued, among other things, that Bullion's "claim" for "alter ego and veil-piercing" failed to allege fraud with particularity as required under NRCP 9(b). On December 9, 2020, the district court entered its order on the motions. Rather than find that Barrick Gold was subject to personal jurisdiction through its subsidiaries, the district court ultimately concluded that Barrick Gold was directly subject to specific personal jurisdiction in Nevada as result of a 2019 corporate transaction in which Barrick Gold's indirect subsidiaries' then-assets were contributed to a new joint venture subsidiary.

In addition, the district court ordered Bullion to amend its pleading to remove its "claims" for "constructive trust" and "alter ego and corporate veil-piercing" and reorganize them as allegations that meet the particularity requirements of NRCP 9(b). Yet, since the amendments the district court instructed Bullion to make would not change the jurisdictional ruling, Barrick Gold filed this Petition on January 22, 2021.

Bullion filed its TAC on February 8, 2021. *See* Mot., Ex. A. The TAC includes substantively the same five claims that arise from the 1979 agreement. Similarly, with few deviations, the TAC rearranges the same allegations that had previously been included in Bullion's purported claims for "constructive trust" and "alter ego and corporate veil-piercing." Lastly, the TAC includes a meritless fraudulent transfer claim that is not levied – nor could it be – against Barrick Gold.

Bullion now moves this Court to dismiss the Petition, claiming it is moot because "the operative complaint" is the TAC. Mot. at 3-6. As detailed below, Bullion's TAC does not alter the basis for the district court's erroneous conclusion that Barrick Gold is subject to personal jurisdiction and must therefore defend itself in a Nevada despite never purposefully availing itself of this forum.

III. ARGUMENT

A. Bullion's TAC Does Not Moot the Petition.

"The burden of demonstrating mootness is a heavy one." *Feldman v. Bomar*, 518 F.3d 637, 642 (9th Cir. 2008). "[A] case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (internal quotation marks omitted).

An amended pleading does not automatically moot pending appellate proceedings. *See Auto Driveaway Franchise Sys., LLC v. Auto Driveaway Richmond, LLC*, 928 F.3d 670, 674 (7th Cir. 2019). The test is whether the revised

pleadings "affected the substantive basis for the district court's order" or affected the petitioner's "basic grievance." *Id.* at 675. Amendments that "affect only some of the claims . . . normally leave[] the underlying dispute undisturbed." *Id.* at 674.¹

For example, in *Auto Driveway Franchise Systems, LLC*, the Seventh Circuit reviewed whether an amended complaint mooted an interlocutory appeal from a preliminary injunction. The Seventh Circuit explained "[p]ractically speaking, the question for us in this case is what might be gained by either party from our review of the challenged order." *Id.* The Seventh Circuit concluded that "[a] quick look reveals the new pleadings . . . had no effect on [plaintiff's] basic grievance." *Id.* at 675. Moreover, the court reasoned, "[r]eal-world consequences would attend anything we were to do with it, whether affirmance, modification, or dissolution. That is the definition of a live controversy." *Id.* at 675.

Bullion asserts that the TAC is a "subsequent event" sufficient to moot Barrick Gold's Petition. Mot. at 3-6. But Bullion's TAC does not alter the substantive

¹ The case law Bullion relies upon is distinguishable and inapplicable. For example, *Ireland v. Wynkoop*, 36 Colo. App. 205, 539 P.2d 1349 (1975), involved an appeal of the district court granting a motion to dismiss directed at the original complaint. Here, the district court did not grant Barrick Gold's motion to dismiss with leave for Bullion to fix any jurisdictional issue. The district court denied the motion finding that Barrick Gold was subject to specific personal jurisdiction. Similarly, *Ex parte Puccio*, 923 So. 2d 1069 (Ala. 2005), the district court did not rule upon the first motion to dismiss, but rather granted leave to amend. Thus, the appellate court made the unremarkable observation that the first motion to dismiss was moot. Here, the district court ruled upon the motion to dismiss and entered an order denying Barrick Gold's motion to dismiss. This is the order that Barrick Gold seeks the Court to review. Bullion's TAC does not somehow moot the district court's jurisdictional order.

basis for the district court's jurisdictional ruling or impact the questions presented in the Petition. There is no question that the Court can grant effective relief to either party by affirming or reversing the district court's jurisdictional ruling, irrespective of Bullion's TAC.

The district court held that Barrick Gold was directly subject to specific jurisdiction, not general jurisdiction. PA 1250-59. Without general jurisdiction, "specific jurisdiction requires a claim-specific analysis, as a nonresident defendant lacking continuous and systematic contacts with the forum state could not 'reasonably anticipate being haled into court' on claims unrelated to the defendant's forum state contacts, and thus haling them into court on those unrelated claims would violate their due process rights." *Gatekeeper Inc. v. Stratech Sys., Ltd.*, 718 F. Supp. 2d 664, 667–68 (E.D. Va. 2010) (collecting cases); *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 458, 282 P.3d 751, 754 (2012) (similar).

Here, the district court's jurisdictional ruling was necessarily limited to the claims advanced in the second amended complaint, and this Court will review the district court's rulings on a per-claim basis. Those claims and the district court's reasoning remain substantively undisturbed by the amended pleading. For example, the TAC includes substantively the same five claims contained within the second amended complaint: (1) declaratory judgment; (2) breach of contract; (3) breach of the covenant of good faith and fair dealing; (4) unjust enrichment; and

(5) accounting. *See generally* TAC. A ruling from this Court will provide meaningful and effective relief as to those claims.

The TAC merely added a few allegations that are immaterial to the district court's analysis of the existing claims and rearranged the same allegations that had previously been included in purported claims for "constructive trust" and "alter ego and corporate veil-piercing" in the second amended complaint.² The TAC also added a new fraudulent transfer claim but it does not impact the erroneous jurisdictional holding against Barrick Gold. This claim is not even levied against Barrick Gold. *See* TAC ¶ 85 ("Goldstrike, Exploration, and other Barrick entities conveyed and transferred all of their mineral interests to Nevada Gold."); *see also Contra Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015) ("Nevada law does not recognize [fraudulent transfer] claims against nontransferees under theories of accessory liability.").³

The TAC does not expound on any new or different jurisdictional connections that would justify hailing Barrick Gold into a Nevada court. Unless Bullion admits

² Barrick Gold intends to move to dismiss again, and file another writ petition if necessary. Alternatively, this Court could hold the Petition in abeyance, and stay other proceedings, pending the district court's ruling on the forthcoming motion to dismiss.

³ Bullion also claims that it included "greater specificity" with regards to its "allegations of fraud in connection with alter ego and constructive trust." Mot. at 6. Although this is simply not true, it is irrelevant for the Court's review of the district court's jurisdictional ruling. The district court did not find that Barrick Gold was subject to personal jurisdiction based upon an alter ego or agency theory.

that the TAC completely changed its jurisdictional theory, or concedes error because the district court's ruling lacked a sufficient factual basis, Bullion cannot legitimately argue that the amendments affect the prior ruling or the issues presented in this Petition. Its silence on this point is telling proof of an attempt at delay. The substantive basis for the district court's jurisdictional ruling has not been altered, and the Petition is not moot. *See Auto Driveaway*, 928 F.3d at 674 (no mootness if amendments "affect only some of the claims . . . normally leav[ing] the underlying dispute undisturbed").

At minimum, this Court should deny the motion to dismiss and address the mootness issue as part of full briefing. The Court has taken this approach in similar situations. *See Order*, Case No. 79555 (Feb. 13, 2020) (denying motion to dismiss preliminary injunction appeal as moot based on an amended counterclaim because "the issues are substantially intertwined with the merits of the appeal and are not appropriate for resolution on a motion to dismiss").

B. A Stay of Proceedings as it Relates to Barrick Gold is Warranted.

When deciding whether to grant a stay, this Court generally considers the following factors: (1) whether the object of the writ petition will be defeated if the stay is not granted, (2) whether petitioner will suffer irreparable or serious injury if the stay is denied, (3) whether a real party in interest will suffer irreparable or serious injury if the stay is granted, and (4) whether petitioner is likely to prevail on the

merits in an appeal. NRAP 8(c); *Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). All of these factors weigh in favor of granting a stay of further proceedings in the district court.⁴

Without issuing a stay, the object of the Petition will be defeated and Barrick Gold will suffer irreparable harm. Barrick Gold will be subjected to the burdens and inconvenience of litigating in a forum in which it has not purposefully availed itself, and it will be forced to endure the costly and time-consuming litigation burdens that it is seeking to avoid through its Petition. Being dragged into a court and forced to litigate in a venue without personal jurisdiction inflicts a constitutional violation and constitutes irreparable harm. *See Consipio Holding, BV*, 128 Nev. at 458, 282 P.3d at 754; *City of Sparks v. Sparks Mun. Court*, 129 Nev. 348, 357, 302 P.3d 1118, 1124 (2013).

In contrast to Barrick Gold, Bullion cannot point to any harm it would face because a "mere delay in pursuing . . . litigation does not constitute irreparable harm." *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 40 (2004). Any delay here rests with Bullion. It has failed to meet basic personal jurisdiction requirements – because there are none – to hale Barrick Gold into both federal and Nevada state court for the better part of a decade.

⁴ NRAP 8(a)(1) is satisfied. *See* Exhibit A.

To avoid a stay, Bullion must show that the relief sought is unattainable – a burden Bullion cannot satisfy. *See id.* But Barrick Gold's burden "does not [require] show[ing] a probability of success on the merits;" instead, Barrick Gold "must present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay." *Hansen*, 116 Nev. at 659. As demonstrated in the Petition, established precedent clearly shows there is no personal jurisdiction over Barrick Gold here. Thus, on balance, the equities weigh in favor of granting a stay. *Id.*

IV. CONCLUSION

For these reasons, Barrick Gold respectfully requests that this Court deny Bullion's Motion to Dismiss and grant a stay of the district court proceedings as to Barrick Gold pending these writ proceedings.

DATED this 17th day of February 2021.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice

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Attorneys for Petitioner Barrick Gold Corporation

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Pisanelli Bice PLLC, and that on the 17th day of February 2021, I caused to be served via the Court's e-filing/e-service system a true and correct copy of the above and foregoing **OPPOSITION TO MOTION TO DISMISS PETITION AND COUNTERMOTION FOR A STAY PENDING DECISION ON WRIT PETITION** to:

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

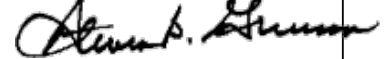
Attorneys for Real Party in Interest Bullion Monarch Mining, Inc.

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Abraham G. Smith, Esq.
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/s/ Kimberly Peets
An employee of Pisanelli Bice PLLC

EXHIBIT A



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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 LC; and DOES 1
through 20,

Defendants.

Case No.: A-18-785913-B
Dept. No.: XI

**NOTICE OF ENTRY OF ORDER
DENYING BARRICK GOLD
CORPORATION'S MOTION TO STAY
PENDING WRIT PETITION**

Date of Hearing: February 1, 2021
Time of Hearing: 9:00 a.m.

PLEASE TAKE NOTICE that an "Order Denying Barrick Gold Corporation's Motion to Stay Pending Writ Petition" was entered in the above-captioned matter on February 17, 2021, a true and correct copy of which is attached hereto.

DATED this 17th day of February, 2021.

PISANELLI BICE PLLC

By: /s/ Debra L. Spinelli

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Dustun H. Holmes, Esq., Bar No. 12776
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Attorneys for Barrick Gold Corporation

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Pisanelli Bice PLLC, and that on the 17th day of February, 2021, I caused to be e-filed/e-served through the Court's CM/ECF system a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** which sent electronic notification to all registered users:

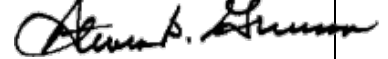
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/s/ Kimberly Peets
An employee of Pisanelli Bice PLLC



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DISTRICT COURT
CLARK COUNTY, NEVADA

BULLION MONARCH MINING,
INC.,

Plaintiff,

vs.

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

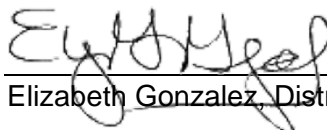
Dep't No. ● XI

**ORDER DENYING BARRICK GOLD
CORPORATION'S MOTION TO STAY
PENDING WRIT PETITION**

Hearing Date: February 1, 2021
Hearing Time: 9:00 a.m.

On February 1, 2021, this Court held a hearing on "Barrick Gold Corporation's Motion to Stay Pending Decision on Writ Petition on an Order Shortening Time," filed on January 28, 2021 (the "Motion"). Having considered the Motion, Plaintiff's Opposition, filed on January 29, 2021, and oral argument,

1 this Court DENIES the Motion without prejudice. Barrick may file a renewed
2 motion if the Supreme Court orders an answer to the petition.

3
4
5  February 16, 2021
6 Elizabeth Gonzalez, District Court Judge
7
8

9 Respectfully submitted by:

Approved as to form and content by:

10 LEWIS ROCA ROTHGERBER CHRISTIE LLP

PISANELLI BICE PLLC

11 By: /s/ Abraham G. Smith

By: /s/ Debra L. Spinelli

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23 *Attorneys for Defendants Barrick*
24 *Gold Corporation, Barrick Nevada*
25 *Holding LLC, Nevada Gold Mines*
26 *LLC, Barrick Goldstrike Mines, Inc.,*
27 *and Barrick Gold Exploration Inc.*
28

Kimberly Peets

From: Debra Spinelli
Sent: Tuesday, February 16, 2021 4:03 PM
To: Kimberly Peets
Subject: Fwd: Bullion/Barrick proposed order denying stay

Sent from my iPhone

Begin forwarded message:

From: "Smith, Abraham" <ASmith@lrrc.com>
Date: February 16, 2021 at 3:59:35 PM PST
To: Debra Spinelli <dls@pisanellibice.com>, "Polsenberg, Daniel F." <DPolsenberg@lrrc.com>, Dustun Holmes <DHH@pisanellibice.com>, James Pisanelli <jjp@pisanellibice.com>, "Brandon J. Mark (BMark@parsonsbehle.com)" <BMark@parsonsbehle.com>, "Ashley C. Nikkel" <ANikkel@parsonsbehle.com>, "Michael R. Kealy" <MKealy@parsonsbehle.com>, "John A. Fortin" <JAF@pisanellibice.com>
Cc: "Clay Brust (CBrust@rssblaw.com)" <CBrust@rssblaw.com>, "Helm, Jessica" <JHelm@lrrc.com>, "Jorgensen, J. Christopher" <CJorgensen@lrrc.com>, "Kapolnai, Emily" <EKapolnai@lrrc.com>, "Kelley, Cynthia" <CKelley@lrrc.com>, Kent Robison <KRobison@rssblaw.com>
Subject: RE: Bullion/Barrick proposed order denying stay

CAUTION: External Email

Sehr gut. I thought we had submitted this one, but apparently not, so please go ahead.

Danke,

Abraham G. Smith

Partner
702.474.2689 office
702.949.8398 fax
asmith@lrrc.com

COVID-19 questions?
Connect to our [Rapid Response Team](#)
for answers and resources.

Lewis Roca
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to you, matters to us.
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From: Debra Spinelli <dls@pisanellibice.com>
Sent: Tuesday, February 16, 2021 3:31 PM
To: Polsenberg, Daniel F. <DPolsenberg@lrrc.com>; Smith, Abraham <ASmith@lrrc.com>; Dustun Holmes <DHH@pisanellibice.com>; James Pisanelli <jjp@pisanellibice.com>; Brandon J. Mark (BMark@parsonsbehle.com) <BMark@parsonsbehle.com>; Ashley C. Nikkel <ANikkel@parsonsbehle.com>; Michael R. Kealy <MKealy@parsonsbehle.com>; John A. Fortin <JAF@pisanellibice.com>
Cc: Clay Brust (CBrust@rssblaw.com) <CBrust@rssblaw.com>; Helm, Jessica <JHelm@lrrc.com>; Jorgensen, J. Christopher <CJorgensen@lrrc.com>; Kapolnai, Emily <EKapolnai@lrrc.com>; Kelley, Cynthia <CKelley@lrrc.com>; Kent Robison <KRobison@rssblaw.com>
Subject: RE: Bullion/Barrick proposed order denying stay

[EXTERNAL]

Hi Abe –

Did you happen to submit this order to the court for signature? We see that the subsequent motion to seal/redact was signed and filed, but there doesn't appear a docket entry/filing for this one. As you can expect, we'd like to get this order (German capitalized nouns and all) signed and entered without further delay.

Thanks,
Debbie

From: Polsenberg, Daniel F. <DPolsenberg@lrrc.com>
Sent: Tuesday, February 2, 2021 11:46 AM
To: Smith, Abraham <ASmith@lrrc.com>; Debra Spinelli <dls@pisanellibice.com>; Dustun Holmes <DHH@pisanellibice.com>; James Pisanelli <jjp@pisanellibice.com>; Brandon J. Mark (BMark@parsonsbehle.com) <BMark@parsonsbehle.com>; Ashley C. Nikkel <ANikkel@parsonsbehle.com>; Michael R. Kealy <MKealy@parsonsbehle.com>
Cc: Clay Brust (CBrust@rssblaw.com) <CBrust@rssblaw.com>; Helm, Jessica <JHelm@lrrc.com>; Jorgensen, J. Christopher <CJorgensen@lrrc.com>; Kapolnai, Emily <EKapolnai@lrrc.com>; Kelley, Cynthia <CKelley@lrrc.com>; Kent Robison <KRobison@rssblaw.com>
Subject: RE: Bullion/Barrick proposed order denying stay

CAUTION: External Email

She must be German.



Dan Polsenberg

President-elect,
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From: Smith, Abraham

Sent: Tuesday, February 2, 2021 11:41 AM

To: Debra Spinelli <dls@pisanellibice.com>; Dustun Holmes <DHH@pisanellibice.com>; James Pisanelli <jpp@pisanellibice.com>; Brandon J. Mark (BMark@parsonsbehle.com) <BMark@parsonsbehle.com>; Ashley C. Nikkel <ANikkel@parsonsbehle.com>; Michael R. Kealy <MKealy@parsonsbehle.com>
Cc: Polsenberg, Daniel F. <DPolsenberg@lrrc.com>; Clay Brust (CBrust@rssblaw.com) <CBrust@rssblaw.com>; Helm, Jessica <JHelm@lrrc.com>; Jorgensen, J. Christopher <CJorgensen@lrrc.com>; Kapolnai, Emily <EKapolnai@lrrc.com>; Kelley, Cynthia <CKelley@lrrc.com>; Kent Robison <KRobison@rssblaw.com>

Subject: RE: Bullion/Barrick proposed order denying stay

You like more capital letters than I do, but we'll roll with it.

From: Debra Spinelli <dls@pisanellibice.com>

Sent: Tuesday, February 2, 2021 10:54 AM

To: Smith, Abraham <ASmith@lrrc.com>; Dustun Holmes <DHH@pisanellibice.com>; James Pisanelli <jpp@pisanellibice.com>; Brandon J. Mark (BMark@parsonsbehle.com) <BMark@parsonsbehle.com>; Ashley C. Nikkel <ANikkel@parsonsbehle.com>; Michael R. Kealy <MKealy@parsonsbehle.com>
Cc: Polsenberg, Daniel F. <DPolsenberg@lrrc.com>; Clay Brust (CBrust@rssblaw.com) <CBrust@rssblaw.com>; Helm, Jessica <JHelm@lrrc.com>; Jorgensen, J. Christopher <CJorgensen@lrrc.com>; Kapolnai, Emily <EKapolnai@lrrc.com>; Kelley, Cynthia <CKelley@lrrc.com>; Kent Robison <KRobison@rssblaw.com>

Subject: Re: Bullion/Barrick proposed order denying stay

[EXTERNAL]

Abe -

With the very few and minor edits in the attached, you may apply my e-signature.

Thanks,

Debbie

From: Smith, Abraham <ASmith@lrrc.com>
Sent: Monday, February 1, 2021 2:12 PM
To: Dustun Holmes; Debra Spinelli; James Pisanelli; Brandon J. Mark (BMark@parsonsbehle.com); Ashley C. Nikkel; Michael R. Kealy
Cc: Polsenberg, Daniel F.; Clay Brust (CBrust@rssblaw.com); Helm, Jessica; Jorgensen, J. Christopher; Kapolnai, Emily; Kelley, Cynthia; Kent Robison
Subject: Bullion/Barrick proposed order denying stay

CAUTION: External Email

Friends,

Attached is Bullion's proposed order denying the motion for stay. Please let us know whether we may attach your e-signature.

Very best,

Abraham G. Smith

Partner
702.474.2689 office
702.949.8398 fax
asmith@lrrc.com

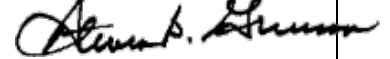
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for answers and resources.

Lewis Roca
ROTHGERBER CHRISTIE

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18 ASmith@LRRC.com

13 *Attorneys for Plaintiff*

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

15 BULLION MONARCH MINING,
16 INC.,

17 Plaintiff,

18 *vs.*

19 BARRICK GOLDSTRIKE MINES,
20 INC.; BARRICK GOLD
21 EXPLORATION INC.; BARRICK
22 GOLD CORPORATION; NEVADA
23 GOLD MINES, LLC; BARRICK
24 NEVADA HOLDING LLC; and DOES
25 1 through 20,

23 Defendants.

Case No. A-18-785913-B

Dep't No. 11

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

Hearing Date: March 29, 2021
Hearing Time: 9:00 a.m.

25 This Court correctly rejected defendant Barrick Gold Corporation's previ-
26 ous bid to avoid this Court's jurisdiction, finding that "Barrick Gold Corporation
27 and Barrick Nevada Holding LLC have . . . purposefully availed themselves of a

1 Nevada forum.” (Nov. 19, 2020 Order Regarding Motions to Dismiss and Mo-
2 tion for a More Definite Statement, at 3, ¶ 7.) Among other things, Barrick
3 Gold orchestrated the creation of a Nevada joint venture—Nevada Gold Mines
4 LLC—to convey and acquire mineral properties in Nevada, through agreements
5 from which some of Bullion’s claims arise:

6 4. The joint venture agreement creating Nevada Gold
7 Mines LLC includes mineral claims Bullion has previously al-
8 leged were included within the area of interest in the 1979
joint venture agreement under which Bullion claims royalties.

9 5. If royalties are owed, Bullion is a beneficiary under
10 the Nevada Gold Mines joint venture agreement because of
the geographic area covered by the joint venture agreement.

11 6. The moving defendants did more than merely be an
12 owner of Nevada Gold Mines. They effectuated the processes
13 to create the joint venture agreement and the entity that
14 would be the joint venture, and implemented the items neces-
sary for the joint venture agreement to be effective. Bullions
claims arise in part from these agreements to which Bullion
is a beneficiary.

15 * * *

16 8. In addition, the forum-selection clause in the joint
17 venture agreement shows that it is not unreasonable for the
Court to exercise its jurisdiction in this case.

18 (Nov. 19, 2020 Order, at 2–3, ¶¶ 4–6, 8.)

19 Barrick Gold acknowledges that this Court “is likely not inclined to
20 change the substantive basis for its ruling.” (Barrick Gold Mot. Dismiss, at 2:5–
21 6.) And for good reason. All of the reasons for exercising personal jurisdiction
22 over Barrick Gold, including its role in the 2019 formation of the Nevada Gold
23 Mines joint venture, persist today. If anything, the new complaint makes the
24 jurisdictional analysis even easier, by adding allegations and a claim for fraudu-
25 lent conveyance based on those very transactions by Barrick Gold in 2019. This

1 Court should deny the motion.¹

2 I.

3 **WHY BULLION FILED AN AMENDED COMPLAINT**

4 As discussed in Bullion’s motion for leave to file the third amended com-
5 plaint (incorporated here), this latest complaint accomplishes two things:

6 First, it complies with this Court’s November 19, 2020 ruling that Bul-
7 lion’s alter-ego claim was more properly a remedy after judgment (not a sepa-
8 rate claim for relief), that Bullion is a third-party beneficiary of the formative
9 agreements of Nevada Gold Mines, LLC, that Bullion’s claim for constructive
10 trust was also a remedy (not a separate claim for relief), and that Bullion’s alle-
11 gations based on fraud needed to be pleaded with more specificity.

12 Second, based in part on Nevada Gold’s initial disclosures served Decem-
13 ber 4, 2020, the complaint adds a claim of fraudulent conveyance alleging that
14 “Goldstrike, Exploration, and other entities owned or controlled by Barrick Gold
15 transferred property” to Nevada Gold in violation of Nevada’s fraudulent con-
16 veyance act, NRS 112.010 *et seq.* (See 3d Am. Compl. ¶¶ 85–88.)

17 As discussed immediately below, the amended complaint does not disturb
18 this Court’s prior jurisdictional analysis. Indeed, the amended complaint pro-
19 vides further support for that analysis.

20
21
22
23
24 ¹ Like Barrick Gold (*see* Mot. 3 n1.), Bullion incorporates all of its prior briefing
25 and arguments on the question of personal jurisdiction, which have been ad-
26 dressed in multiple motions and orders. In particular, because Barrick Gold’s
27 February 22, 2021 motion draws liberally from its previous motion, filed July
28 28, 2020, Bullion incorporates its opposition to that earlier motion, filed August
21, 2020. Bullion also incorporates here its concurrently filed opposition to Bar-
rick Goldstrike, Barrick Exploration, and Nevada Gold Mines’ motions to dis-
miss (and Barrick Gold’s joinder).

1 II.

2 **THIS COURT’S PRIOR FINDING OF “PURPOSEFUL AVAILMENT”**
3 **HAS EQUAL PURCHASE UNDER THE NEW COMPLAINT**

4 **A. Nothing in the New Complaint Undermines the**
5 **Court’s Prior Finding of Purposeful Availment**

6 “[W]here a defendant who purposefully has directed his activities at fo-
7 rum residents seeks to defeat jurisdiction, he must present a *compelling* case
8 that the presence of some other considerations would render jurisdiction unrea-
9 sonable.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985).

10 Barrick Gold itself recognizes that this Court previously found purposeful
11 availment sufficient to subject Barrick Gold to this Court’s jurisdiction. (*E.g.*,
12 Barrick Gold Mot. 15 n.7.) This Court’s analysis was based on Barrick Gold’s
13 own minimum contacts with Nevada, not merely those in its role as an agent or
14 alter ego of its subsidiaries. And Barrick Gold’s arguments in this motion
15 largely repeat those this Court rejected last time. Barrick does not identify a
16 single change from the previous complaint to the new one that makes the exer-
17 cise of jurisdiction *more* tenuous. This Court can and should reject Barrick’s ar-
18 guments now.

19 **B. Barrick’s Writ Petition is Moot as a Procedural**
20 **Matter and Because the New Complaint**
21 **Includes Additional Bases for Jurisdiction**

22 Barrick Gold bristles at Bullion’s filing a motion to dismiss Barrick Gold’s
23 writ petition. But Barrick Gold’s indignation is misplaced in at least two ways.
24 First, while the motion does not concern this Court, the motion was procedur-
25 ally necessary because Barrick Gold is asking for relief from a superseded com-
26 plaint. Second, the new complaint includes further support for this Court’s pre-
27 vious ruling, making clear that Bullion’s claims do not arise solely from the
28 1979 Agreement, as Barrick Gold insists, but from the very 2019 agreements to
which Barrick Gold was a party.

1 **1. *Barrick Gold’s Petition is Moot Because It Does***
2 ***Not Challenge the Operative Complaint***

3 The Nevada Supreme Court dismisses a writ petition if it becomes moot.
4 *Valdez-Jimenez v. Eighth Judicial Dist. Court*, 136 Nev. 155, 158, 460 P.3d 976,
5 981 (2020). And one of the ways that writ relief becomes moot is when the de-
6 fendant challenges personal jurisdiction under a pleading that has since been
7 amended. *Ex parte Puccio*, 923 So. 2d 1069, 1072, 1073, 1077 (Ala. 2005).

8 That is not a commentary on the correctness of the prior ruling or the pos-
9 sible continuing relevance of prior findings to an amended complaint that in-
10 cludes similar allegations. It is simply a procedural recognition that an
11 amended or supplemental complaint “supersede[s] all claims for relief alleged in
12 the original complaint.” *McKnight Family, L.L.P. v. Adept Mgmt.*, 129 Nev.
13 610, 615, 310 P.3d 555, 558 (2013).

14 Here, Barrick Gold’s petition is procedurally moot simply because it is not
15 directed at the operative complaint, regardless of the similarities between the
16 prior complaint and this one.

17 **2. *The Fraudulent-Conveyance Claim Provides***
18 ***Additional Jurisdictional Support***

19 Moreover, while nothing in the new complaint undermines the prior juris-
20 dictional ruling, the new fraudulent-conveyance claim *bolsters* that finding by
21 making clear Bullion’s reliance on the 2019 joint-venture agreements.²

22 Barrick Gold concedes that it orchestrated the formation of the Nevada
23 Gold joint venture specifically directed at transferring and operating valuable
24 mineral interests in Nevada. But Barrick Gold repeatedly insists that Bullion’s
25 complaint arises not from that venture, but solely from the 1979 Agreement, to

26

² Although irrelevant to this Court’s decision, this further explains why it would
27 be inappropriate for the Supreme Court to decide the merits of the petition
28 based on the prior complaint, potentially overlooking the additional bases for
exercising jurisdiction over Barrick Gold.

1 which Barrick Gold claims it is not a party. Of course, Nevada Gold itself has
2 admitted that “[i]f an established obligation existed on the date the property
3 was transferred to NGM, such as a royalty, then NGM assumed that obliga-
4 tion.” (Nevada Gold Mines 8/6/20 Mot. 8:21–22.) That is in part why this Court
5 found that “[i]f royalties are owed, Bullion is a beneficiary under the Nevada
6 Gold Mines joint venture agreement because of the geographic area covered by
7 the joint venture agreement. (11/19/20 Order, at 2–3, ¶ 5.) And that is why
8 Bullion’s contractual and equitable claims even under the prior complaint suf-
9 ficed to hale Barrick Gold into this Court.

10 The fraudulent-conveyance claim provides an even more direct connection
11 to Barrick Gold’s 2019 joint-venture agreements. Bullion alleges that Barrick
12 Goldstrike and/or Exploration conveyed valuable mineral interests at Barrick
13 Gold’s behest without receiving adequate consideration, making Bullion’s roy-
14 alty insecure. Barrick Gold argues that this claim “is not even levied—nor
15 could it be—against Barrick Gold.” (Barrick Gold Mot. 12:3.) Bullion disagrees,
16 particularly since the allegation is that the transfers were from “entities owned
17 or controlled by Barrick Gold” and considering that the requested remedy—that
18 the transfers “be rescinded and/or voided” (3d Am. Compl. ¶ 86)—would have
19 the effect of invalidating the joint-venture agreement to which Barrick Gold is a
20 party. Regardless, the claim is squarely based on Barrick Gold’s transactions in
21 2019, including Barrick Gold’s joint-venture agreements. Barrick Gold’s effort
22 to paint this case as arising from nothing more than the 1979 Agreement is un-
23 tenable.

24 **C. The Forum-Selection Clause Shows that Barrick Gold Does**
25 **Not Consider Nevada an Unreasonable Forum**

26 Barrick Gold adds to its protest an argument that the forum-selection
27 clause in the limited-liability company agreement is “not relevant” because Bul-
28 lion supposedly cannot invoke it. (Barrick Gold Mot. 24:3–18.) This is wrong on

1 two counts. First, because the agreement concerns the transfer of mineral prop-
2 erties—including royalties on those properties in which Bullion claims an inter-
3 est—Bullion’s claim is a “matter[] relating to this Agreement and the rights and
4 obligations of the Parties hereunder.” (Barrick Nevada Holding App. 354, at
5 § 14.1.) The forum-selection clause applies directly. Second, regardless of
6 whether the clause itself extends to this dispute, it refutes the notion that sub-
7 jecting Barrick Gold to jurisdiction in Nevada—after having purposely availed
8 itself of a Nevada forum—is unreasonable.³

9 **CONCLUSION**

10 Just as this Court had jurisdiction over Barrick Gold under the previous
11 complaint, this Court continues to have jurisdiction over Barrick Gold under the
12 amended complaint. This Court should deny the motion.

13 Dated this 10th day of March, 2021.

14 LEWIS ROCA ROTHGERBER CHRISTIE LLP

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27 *Attorneys for Plaintiff*

28 ³ Barrick Gold’s reference to the Canadian forum-selection clause in the imple-
mentation agreement is a *non sequitur*. The fact that it would also be reason-
able to subject Barrick Gold to jurisdiction in Canada does not negate the reason-
ableness of a Nevada forum, where Barrick Gold has executed a separate agree-
ment and forum-selection clause.

1 CERTIFICATE OF SERVICE

2 Pursuant to Nev. R. Civ. P. 5(b) and E.D.C.R. 8.05, I certify that I caused
3 the foregoing opposition to be filed via the Court's E-File & Serve System upon
4 the following persons:

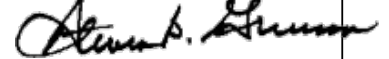
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17 *Attorneys for Defendants*

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19
20 Dated this 10th day of March, 2021.

21 /s/ Jessie M. Helm
22 an employee of Lewis Roca Rothgerber Christie LLP



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DISTRICT COURT
CLARK COUNTY, NEVADA

19 BULLION MONARCH MINING, INC.,
20
21 Plaintiff,
22
23 v.
24 BARRICK GOLDSTRIKE MINES, INC.;
25 BARRICK GOLD EXPLORATION INC.;
26 BARRICK GOLD CORPORATION;
27 NEVADA GOLD MINES, LLC; BARRICK
28 NEVADA HOLDING LLC; and DOES 1
through 20,
Defendants.

Case No.: A-18-785913-B
Dept. No.: XI

**REPLY IN SUPPORT OF
BARRICK GOLD CORPORATION'S
MOTION TO DISMISS PLAINTIFF'S
THIRD AMENDED COMPLAINT**

Date of Hearing: March 29, 2021
Time of Hearing: 9:00 a.m.

1 **I. INTRODUCTION**

2 Bullion Monarch Mining, Inc. ("Bullion") knows it led the Court astray in finding that the
3 Canadian-based parent company, Barrick Gold Corporation ("Barrick Gold"), is subject to
4 specific personal jurisdiction in this matter. Rather than admit error, Bullion has now deployed a
5 strategy it hopes will fix the mistake. Specifically, because it is patently clear that Bullion's
6 royalty claims arise from the 1979 Agreement – not the 2019 corporate transaction – Bullion filed
7 a Third Amended Complaint tacking on a meritless fraudulent conveyance claim. With this,
8 Bullion now perceives it has a "claim" that will hook Barrick Gold into this litigation. The only
9 problem is this purported "claim" is not and cannot support jurisdiction against Barrick Gold.

10 Bullion's attempt to spin it as a "bolster" to support specific jurisdiction against
11 Barrick Gold should tell the Court all it needs to know. After all, if the Court's specific
12 jurisdiction ruling is correct, Bullion does not need to conjure up additional grounds. It is not as
13 if Barrick Gold can be subject to more specific jurisdiction. Yet, that is the absurdity of Bullion's
14 position. Respectfully, the Court should decline Bullion's flawed effort. Barrick Gold is not
15 subject to jurisdiction in Nevada for this lawsuit.

16 **II. ARGUMENT**

17 **A. The Fraudulent Conveyance Claim Does Not Support Jurisdiction Against**
18 **Barrick Gold.**

19 Despite *telling the Nevada Supreme Court* that this Court's prior jurisdictional ruling, and
20 thus purportedly Barrick Gold's writ petition, became moot as a result of the filing of the
21 Third Amended Complaint (the "TAC"), Bullion now reverses course, *telling this Court* the TAC
22 "does not disturb this Court's prior jurisdictional analysis." (Bullion's Opp'n, on file, Mar. 10,
23 2021, 3:17-18.) Thus, Bullion by and large defers to its prior briefing.¹

24 Yet, Bullion now claims that – even though the Court's prior jurisdictional analysis is not
25 disturbed and on solid footing – the TAC's "new fraudulent-conveyance claim *bolsters*"

26 ¹ As previously indicated in the moving papers, Barrick Gold also incorporates by reference
27 its prior briefing on personal jurisdiction. (See Barrick Gold's Mot. to Dismiss, on file, Oct. 11,
28 2019; Barrick Gold's Opp'n to Mot. for Leave to File Am. Comp., on file, Dec. 18, 2019;
Barrick Gold's Mot. to Dismiss Second Am. Comp., on file, July 28, 2020; Barrick Gold's Reply
in Support of Mot. to Dismiss Second Am. Comp., on file, Sept. 8, 2020.)

1 jurisdiction against Barrick Gold. (Bullion Opp'n 5:20 (emphasis in original).) Quite the opposite.
2 Rather than rectify the issue, Bullion's TAC and subsequent conduct merely confirms that
3 Barrick Gold is not and never should have been subject to jurisdiction here.

4 Bullion's "new fraudulent-conveyance claim" does not and cannot support jurisdiction
5 against Barrick Gold. Remarkably, Bullion contends that it "disagrees" with the notion that this
6 claim is not directed at Barrick Gold. The very language of Bullion's TAC belies this position.
7 (See TAC ¶¶ 86-87 ("Goldstrike, Exploration, and other entities . . . transferred property . . .")
8 ("Such transfer of property from Goldstrike, Exploration, and other entities . . . to Nevada Gold
9 Mines, LLC").) Bullion does not allege – nor could it – that Barrick Gold was either the transferee
10 or the transferor. Instead, Bullion claims that since it alleges "the transfers were from entities
11 owned or controlled by Barrick Gold" this is sufficient. Bullion is wrong.

12 First, Bullion does not dispute that "Nevada law does not recognize [fraudulent transfer]
13 claims against nontransferees under theories of accessory liability." *Cadle Co. v. Woods &*
14 *Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015). As the *Cadle* Court explained,
15 "fraudulent transfer claims are traditionally claims for equitable relief" and thus "it makes little
16 sense to impose an equitable remedy against someone who never had possession of the property."
17 *Id.* at 118, 1052-53. Bullion does not allege that Barrick Gold ever had legal possession of the
18 mineral properties transferred to the new joint subsidiary – Nevada Gold Mines, LLC ("NGM").
19 Indeed, the vast amounts of evidence already submitted to the Court proves the opposite.

20 Second, to the extent Bullion is arguing that because Barrick Gold is the ultimate parent
21 company of the subsidiaries that are the transferee or the transferor, and thus Barrick Gold
22 "owned or controlled" these entities, Bullion failed to make any showing that Barrick Gold is the
23 alter ego or agent of these subsidiaries sufficient for jurisdiction. Under the law, "corporate
24 entities are presumed separate, and thus, the mere existence of a relationship between a parent
25 company and its subsidiaries is not sufficient to establish personal jurisdiction over the parent on
26 the basis of the subsidiaries' minimum contacts with the forum." *Viega GmbH v. Eighth Jud.*
27 *Dist. Ct.*, 130 Nev. 368, 375, 328 P.3d 1152, 1157 (2014) (quotations and citations omitted);
28 "Subsidiaries' contacts have been imputed to parent companies only under narrow exceptions to

1 this general rule, including alter ego theory and, at least in cases of specific jurisdiction, the
2 agency theory." *Id.* Bullion cannot circumvent the two narrow exceptions or avoid its burden
3 through bootstrapping Barrick Gold to a fraudulent conveyance claim directed at the subsidiaries.

4 Nor is there any support for Bullion's assertion that the meritless fraudulent transfer claim
5 would purportedly "have the effect of invalidating the joint-venture agreement." (Bullion's Opp'n,
6 on file, Mar. 10, 2021, 6:19-20.) "[T]he general rule that the relief to which a defrauded creditor is
7 entitled in an action to set aside a fraudulent conveyance is limited to setting aside the conveyance
8 of the property." *Cadle Co.*, 131 Nev. at 119, 345 P.3d at 1053. Thus, even assuming Bullion's
9 claim had merit (it does not), then its relief is confined to setting aside the conveyance, which
10 Bullion has failed to identify with any specificity in the TAC.

11 Bullion's "effort to paint this case" as anything other than claims arising out of the
12 1979 Agreement for which it contends it is owed royalties confirms exactly what this case is *not*
13 about – the 2019 corporate transaction. Bullion's half-baked fraudulent conveyance claim and the
14 lengths it goes to "bolster" non-existent jurisdiction confirms the Court should revisit, reconsider,
15 and reverse its prior jurisdictional ruling.

16 **B. The Forum Selection Clause in an Unrelated Agreement Does Not Support**
17 **the Reasonableness of Jurisdiction in this Case.**

18 Bullion also feels it is necessary to address its reliance upon the forum-selection clause in
19 the Limited Liability Company Agreement for NGM to support the reasonableness of jurisdiction
20 over Barrick Gold. Recall, it was Bullion who previously insisted that this forum selection clause
21 supports the reasonableness of jurisdiction, and this Court adopted Bullion's reasoning. But
22 Bullion failed to inform the Court of a fatal flaw in this analysis. Specifically, the
23 NGM Implementation Agreement contains a Canadian forum selection clause. (*See Appx. to*
24 *Barrick Holding's Mot. to Dismiss*, on file, Aug. 6, 2020, Ex. E (providing that each party
25 "submits to the non-exclusive jurisdiction of the courts of the Province of Ontario over any action
26 or proceeding arising out of or relating to this Agreement.")) In other words, the very agreement
27 that the Court determined showed Barrick Gold "effectuated the process to create the joint
28

venture . . . and implemented the items necessary for the joint venture agreement" contains a foreign forum selection clause.

Bullion, in a footnote, chalks this up as "non sequitur." Yet, the Canadian forum selection clause in the agreement that goes directly to the Court's ruling is hardly a "non sequitur." If anything, under Bullion's logic (adopted by this Court) about Barrick Gold effectuating and implementing the process of creating the joint venture, this Canadian forum selection clause in the Implementation Agreement is and should be more important than the Nevada forum selection clause in NGM's Limited Liability Company Agreement. To be clear, however, from Barrick Gold's perspective, neither forum selection clause has any relevance to whether it is reasonable to subject Barrick Gold to jurisdiction in Nevada for Bullion's claims. Bullion is not a party to those agreements and they are unrelated to Bullion's claims in this action.

The inquiry is whether Barrick Gold "should have reasonably anticipated being haled into court in Nevada" for this particular suit. *Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 703, 857 P.2d 740, 750 (1993). The mere fact that Barrick Gold may consider Nevada a reasonable forum to resolve disputes regarding the structure and operation of NGM between the parties to that specific agreement does not mean that it is reasonable to subject Barrick Gold to jurisdiction in Nevada for any and all matters. That, of course, would transform the specific jurisdictional analysis into a general jurisdictional analysis, which would be improper.

III. CONCLUSION

Bullion's Third Amended Complaint does not provide any additional support to overcome the lack of personal jurisdiction against Barrick Gold. Instead, it confirms that Barrick Gold is not and never should have been subject to jurisdiction here.

DATED this 22nd day of March, 2021.

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Attorneys for Barrick Gold Corporation

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Pisanelli Bice PLLC, and that on the 22nd day of March, 2021, I filed a true and correct copy of the foregoing **REPLY IN SUPPORT OF BARRICK GOLD CORPORATION'S MOTION TO DISMISS PLAINTIFF'S THIRD 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:

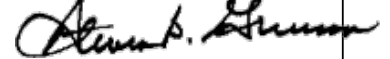
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DISTRICT COURT

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

**NOTICE OF ENTRY OF ORDER
DENYING BARRICK GOLD
CORPORATION'S MOTION TO DISMISS
PLAINTIFF'S THIRD AMENDED
COMPLAINT**

Date of Hearing: March 29, 2021

Time of Hearing: Chambers

PLEASE TAKE NOTICE that an "Order Denying Barrick Gold Corporation's Motion to Dismiss Plaintiff's Third Amended Complaint" was entered in the above-captioned matter on April 21, 2021, a true and correct copy of which is attached hereto.

DATED this 21st day of April, 2021.

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By: /s/ Dustun H. Holmes

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Attorneys for Barrick Gold Corporation

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Pisanelli Bice PLLC, and that on the 21st day of April, 2021, I caused to be e-filed/e-served through the Court's CM/ECF system a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** which sent electronic notification to all registered users:

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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

**ORDER DENYING BARRICK GOLD
CORPORATION'S MOTION TO DISMISS
PLAINTIFF'S THIRD AMENDED
COMPLAINT**

Date of Hearing: March 29, 2021

Time of Hearing: Chambers

1 The Court reviewed and considered Defendant Barrick Gold Corporation's
2 ("Barrick Gold") Motion to Dismiss Plaintiff Bullion Monarch Mining, Inc.'s (Bullion's) Third
3 Amended Complaint ("Motion to Dismiss"), the related briefing, and being fully informed, hereby
4 finds:

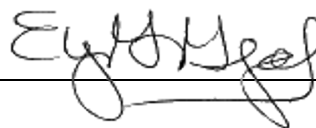
5 1. Consistent with the Court's November 19, 2020 order, Barrick Gold has
6 purposefully availed itself of jurisdiction in Nevada.

7 2. Bullion's claims arise in part from the agreements referenced in the Court's
8 November 19, 2020 order to which Bullion is a beneficiary.

9 3. The forum-selection clause in the joint venture agreement shows that it is not
10 unreasonable for the Court to exercise its jurisdiction in this case.

11 In light of the foregoing, and good cause appearing, IT IS HEREBY ORDERED,
12 ADJUDGED, AND DECREED that the Motion to Dismiss is DENIED.

13 Dated this 21st day of April, 2021

14 
15

16
17 169 A42 4FD6 C98E
18 Elizabeth Gonzalez
19 District Court Judge

20 Respectfully Submitted by:

21 PISANELLI BICE

22 By: /s/ Dustun H. Holmes
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2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Bullion Monarch Mining Inc,
7 Plaintiff(s)

CASE NO: A-18-785913-B

8 vs.

DEPT. NO. Department 11

9 Barrick Goldstrike Mines Inc,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
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