

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 BARRICK GOLD CORPORATION,

Case No.

3 Petitioner,

4 vs.

Electronically Filed
Aug 25 2021 08:39 a.m.

5 THE EIGHTH JUDICIAL DISTRICT
6 COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE
8 COUNTY OF CLARK; AND THE
9 HONORABLE ELIZABETH
10 GONZALEZ, DISTRICT JUDGE,
11 DEPT. XI,

Elizabeth A. Brown
Clerk of Supreme Court
**APPENDIX IN SUPPORT OF
BARRICK GOLD CORPORATION'S
PETITION FOR WRIT OF
PROHIBITION**

12 Respondent,

VOLUME I OF VIII

13 and

14 BULLION MONARCH
15 MINING, INC.,

16 Real Party in Interest.

17 DATED this 24th day of August, 2021.

18 PISANELLI BICE PLLC

19 By: /s/ Jordan T. Smith

James J. Pisanelli, Esq., #4027

Todd L. Bice, Esq., #4534

Debra L. Spinelli, Esq., #9695

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Las Vegas, Nevada 89101

24 *Attorneys for Petitioner Barrick Gold Corporation*

CHRONOLOGICAL INDEX

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Barrick Gold Corporation's Motion to Dismiss	10/11/2019	I	PA 0045-0128
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Bullion Monarch Mining, Inc.'s Opposition to Motion to Dismiss FILED UNDER SEAL	11/12/2019	I, II	PA 0186-0329
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Notice of Entry of Order Denying Barrick Gold Corporation's Motion to Dismiss Plaintiff's Third Amended Complaint	04/21/2021	VII	PA 1554-1559
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11	Transcript of Proceedings	09/22/2020	VI	PA 1174-1249

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 24th day of August, 2021, I electronically filed and served via United States Mail, postage prepaid, a true and correct copy of the above and foregoing **APPENDIX TO BARRICK GOLD CORPORATION'S PETITION FOR WRIT OF PROHIBITION** properly addressed to the following:

Clayton P. Brust, Esq.
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Joel D. Henriod, Esq.
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The Honorable Elizabeth Gonzalez
Eighth Judicial District court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

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

**PA 0001-0041
FILED UNDER SEAL**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Purchase/Sale of Stock, Assets,
or Real Estate**

COURT MINUTES

April 22, 2019

A-18-785913-B	Bullion Monarch Mining Inc, Plaintiff(s) vs. Barrick Goldstrike Mines Inc, Defendant(s)
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April 22, 2019 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 03E

COURT CLERK: Dulce Romea

RECORDER: Sandra Pruchnic

PARTIES

PRESENT:	Brust, Clayton P.	Attorney for Plaintiff
	Jorgensen, J. Christopher	Attorney for Plaintiff
	Nikkel, Ashley C.	Attorney for Defendants
	Polsenberg, Daniel F.	Attorney for Plaintiff

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Jan Steiert, General Counsel for Bullion Monarch Mining, Inc.; Attorney Michael Petrogeorge and Attorney Brandon Mark for the Defendants.

NOTICE OF MOTION AND MOTION TO ASSOCIATE COUNSEL - MICHAEL P. PETROGEORGE...NOTICE OF MOTION AND MOTION TO ASSOCIATE COUNSEL - BRANDON J. MARK: Motions to associate unopposed. COURT ORDERED, motions GRANTED. By accepting this admission, Counsel agrees to submit to jurisdiction and appear without subpoena for any proceedings required by the Court which relate to Counsel's conduct in this matter including motions, depositions, and evidentiary hearings. SCR 42(13)(a).

Proposed orders signed in open court and returned to counsel for filing.

NOTICE OF MOTION AND DEFENDANT'S MOTION TO STAY PROCEEDINGS: Mr. Petrogeorge argued in support of a stay pending the federal appeal. Mr. Polsenberg opposed, stating it will be a waste of time to hold this in abeyance pending the appeal. COURT ORDERED, motion

PRINT DATE: 04/22/2019

Page 1 of 3

Minutes Date: April 22, 2019

DENIED since on a jurisdictional basis in federal court.

MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION: Mr. Petrogeorge argued in support of the motion. Upon Court's inquiry, Mr. Polsenberg stated he would like to do jurisdictional discovery on what ABX owns, what Exploration owns, and what the other entities own; it will be a few 30(b)(6) depositions and preliminary written discovery although the other side will probably not produce that. Mr. Petrogeorge objected stating this was an unfair characterization as multiple people have the information.

COURT ORDERED, jurisdictional discovery GRANTED as to ABX only, as follows:

- Written discovery with a 20-day response period
- Not to exceed three 30(b)(6) depositions on jurisdictional discovery only

Upon Mr. Petrogeorge's inquiry, Mr. Polsenberg advised it will be 8 weeks on the jurisdictional discovery. COURT ORDERED, matter SET for status check on the chambers calendar on June 7, 2019. Counsel to FILE a status report the day before. Motion to Dismiss for Lack of Personal Jurisdiction TO BE RENOTICED, with supplemental briefing.

NOTICE OF MOTION AND MOTION TO DISMISS BULLION MONARCH MINING INC'S CLAIMS AGAINST BARRICK GOLD EXPLORATION INC: Mr. Petrogeorge's hand-out MARKED as Court's Exhibit 1 for today. (See worksheet.) Arguments by Mr. Petrogeorge and Mr. Polsenberg. COURT ORDERED, motion DENIED.

MANDATORY RULE 16 CONFERENCE: Parties STIPULATED to utilizing the documents from the federal court litigation.

COURT ORDERED, today is the parties' joint case conference and the filing of the joint case conference report (JCCR) is WAIVED.

Court noted it will not do a bifurcation but counsel can file a motion.

Mr. Jorgensen stated it is his understanding 30 depositions have been taken. Parties STIPULATED to using those depositions in the instant case. Mr. Jorgensen requested an additional 10 to 15 depositions primarily on the damages issue. Mr. Brust added that they also need discovery on what mineral properties were picked up by Barrick in areas of interest; there will also be accounting type issues; parties had also entered into a specific confidentiality agreement that they will want to carry over into this case, and it is mostly from Barrick's side. COURT ORDERED, it will NOT CARRY OVER the confidentiality agreement here because federal court's procedures are very different; if the parties wish they can enter into a stipulated protective order in this case.

Mr. Brust added that they may need to revisit experts; several of the witnesses have passed away and he does not know if the experts who are still around are still practicing. Upon Court's inquiry, Mr. Brust confirmed the experts will be on financial and land acquisition issues. Mr. Petrogeorge suggested there should be a supplemental to the extent any of the witnesses are still available; if they have passed away, then that would be another issue. COURT NOTED it will not permit supplemental disclosures as this is a new case.

COURT ORDERED as follows:

Initial expert disclosures where a party bears the burden of proof DUE by September 6, 2019;

Rebuttal expert disclosures where a party does not bear the burden of proof DUE by October 18, 2019;

Discovery cut-off SET for January 10, 2020;

Dispositive motions and motions in limine TO BE FILED by February 28, 2020;

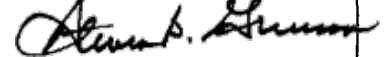
Matter SET for trial on the stack beginning on April 20, 2020. Jury DEMANDED. Parties anticipated the trial taking 3 weeks. Trial Setting Order will ISSUE.

Mr. Petrogeorge advised he believes their mediation will be broad enough to cover the issues in this case. Mr. Polsenberg noted it would be nice to have a back-up. Mr. Petrogeorge declined to go to Judge Allf stating she used to be in their firm. Per parties' agreement, matter REFERRED to Judge Denton for a settlement conference on August 2, 2019. Mr. Jorgensen is DIRECTED to contact Judge Denton's Executive Assistant for instructions and share them with all counsel.

No ESI protocol requested at this time.

6-7-19 CHAMBERS STATUS CHECK: JURISDICTIONAL DISCOVERY (DEPT XI - Gonzalez)

8-2-19 9:30 AM SETTLEMENT CONFERENCE (DEPT XIII - Denton)



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DISTRICT COURT
CLARK COUNTY, NEVADA

BULLION MONARCH MINING, INC.,

Plaintiff,

v.

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

Defendants.

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

**BARRICK GOLD CORPORATION'S
MOTION TO DISMISS**

HEARING REQUESTED

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

Nearly ten years later in December 2018, after the United States District Court, District of Nevada dismissed the rest of Bullion's case, Bullion then sought to resuscitate its long-expired claims against Barrick Gold. But whether or not Bullion can proceed with its claims against

1 Goldstrike or any other defendant, the law quite definitely does not allow Bullion to resurrect its
2 stale claims against Barrick Gold.

3 First, much like Bullion's previous federal court complaint, Bullion's complaint still fails
4 to allege any facts that would subject Barrick Gold to personal jurisdiction in Nevada. As Bullion
5 confessed a decade ago, Barrick Gold does not belong in this Court. Second, Bullion's strategic
6 choice in 2009 bars its renewed attempt to enforce any supposed claims against Barrick Gold.
7 Specifically, Bullion's desire to now revive its voluntarily-dismissed claims against Barrick Gold
8 is barred under NRS 11.190, Nevada's applicable statute of limitations.

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

11 DATED this 11th day of October, 2019.

12 PISANELLI BICE PLLC

13 By: 

14 James J. Pisanelli, Esq., Bar No. 4027
15 Debra L. Spinelli, Esq., Bar No. 9695
16 Dustun H. Holmes, Esq., Bar No. 12776
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20 *Attorneys for Defendant Barrick Gold Corporation*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In June 2009, Bullion filed suit in federal court, naming Barrick Gold and Barrick Goldstrike Mines, Inc. ("Goldstrike") (an indirect subsidiary of Barrick Gold that operates a mine in Nevada) for the same claims it alleges in this case. Barrick Gold immediately moved to dismiss for lack of personal jurisdiction, as Barrick Gold has each time it has been sued in Nevada, whether in federal or state court. Barrick Gold supported its motion with a detailed declaration establishing that it lacks any contacts with the Nevada forum. (Declaration of Sybil Veenman, Barrick Gold's then corporate secretary, July 16, 2009, Exhibit A hereto.) Without filing an opposition or otherwise contesting the facts, Bullion stipulated to the dismissal of Barrick Gold. (Stipulation for Dismissal, July 27, 2009, Exhibit B hereto.) That should have been the end of Barrick Gold's involvement in this litigation.

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

Moreover, like its complaint from ten years ago, Bullion's complaint in this action fails to allege any facts that would subject Barrick Gold to jurisdiction in Nevada. Because Barrick Gold has no contacts with the Nevada forum that would permit the Court to exercise jurisdiction, and as Bullion recognized a decade ago, the Court must dismiss Barrick Gold.

1 II. STATEMENT OF FACTS

2 A. Bullion Stipulated to Dismiss Barrick Gold from the Federal Action in
3 Nevada Because Nevada Courts Lack Personal Jurisdiction over
4 Barrick Gold.

5 In 2008, Bullion first filed an action in federal court against Newmont USA Limited
6 asserting the same claims as it alleges here. In June 2009, Bullion amended its complaint in
7 federal court to add two defendants: Barrick Gold and Goldstrike. (*See* First Am. Compl.,
8 *Bullion Monarch Mining v. Newmont USA Ltd.*, 3:08-cv-00227 (D. Nev.), Exhibit C hereto.)¹
9 Bullion's allegations in federal court, like its allegations here, "lumped together" Barrick Gold and
10 Goldstrike for jurisdictional purposes – treating them as one indistinguishable entity even though
11 each has vastly different contacts or, in the case of Barrick Gold, no contacts – with the Nevada
12 forum. (Barrick Gold Mem. for Motion to Dismiss at 1, July 16, 2009, *Bullion Monarch Mining*
13 *v. Newmont USA Ltd.*, 3:08-cv-00227 (D. Nev.), Exhibit D hereto.) Barrick Gold immediately
14 moved to dismiss based on the court's lack of personal jurisdiction. (*Id.*)

15 Barrick Gold's motion established, through, among other things, a declaration of Sybil
16 Veenman, that Barrick Gold had no presence in Nevada, had no contacts with Nevada, and was
17 not subject to jurisdiction in Nevada. (Veenman Decl., Ex. A.) Additionally, Ms. Veenman's
18 declaration established that Barrick Gold and its subsidiaries observed all corporate formalities
19 and properly maintained their separate corporate existence. (*Id.*) Instead of contesting any of
20 these established facts, Bullion voluntarily dismissed Barrick Gold. (Stipulation, Ex. B.)
21
22
23

24 ¹ The Court is permitted to take judicial notice and consider the filings in the federal action
25 in deciding the motion to dismiss. *See, e.g., Brelant v. Preferred Equities Corp.*, 109 Nev. 842,
26 847, 858 P.2d 1258, 1261 (1993) (court may take into account matters of public record, orders,
27 items present in the record of the case, and any exhibits attached to the complaint when ruling on
28 a motion to dismiss); *Mack v. Estate of Mack*, 125 Nev. 80, 92, 206 P.3d 98, 106 (2009) (taking
judicial notice of related court proceedings); *see also Asdar Group v. Pillsbury, Madison & Sutro*,
99 F.3d 289, 290 n.1 (9th Cir. 1996) (court may take judicial notice of the pleadings and court
orders in earlier related proceedings); *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504
(9th Cir.1986) (court may take judicial notice of public records without converting a motion to
dismiss into a motion for summary judgment).

1 In its pleading before this Court, Bullion confesses, on the very face of the Complaint, that
2 *all of its purported claims against Barrick Gold accrued in June 2009.* (Compl. ¶ 30.)² Bullion
3 admits this fact but fails to tell this Court of its original action and subsequent abandonment of
4 those claims. Setting aside those dispositive facts, Bullion will concede, as it must, that it took no
5 action to preserve or enforce its purported claims against Barrick Gold. Rather, Bullion just let
6 years pass.

7 Then, following the dismissal of its federal cases against Newmont and Goldstrike,
8 Bullion simply filed the current state action in December 2018, and now attempts to revive its
9 long-dismissed claims against Barrick Gold.³ Bullion's state court complaint asserts the very
10 same five causes of action as in its federal case: (1) declaratory judgment; (2) breach of contract;
11 (3) breach of the covenant of good faith and fair dealing; (4) unjust enrichment; and
12 (5) accounting.

13 Notably, none of the allegations in Bullion's five causes of action specifically reference
14 Barrick Gold. (*Id.* ¶¶ 35-63.) Rather, the only *specific* allegations in the complaint as to
15 Barrick Gold are: (1) Barrick Gold "is an Ontario corporation⁴ doing business in Nevada at all
16 times relevant hereto," and (2) "Barrick Gold is – and at all relevant times was – the 100% owner
17 of ABX [Financeco Inc., another defendant]." (*Id.* ¶ 5.) The fact that Bullion failed to plead any
18 legally relevant nexus between Barrick Gold and its claims, this case, or the State of Nevada is
19 one thing. But, even if there was a nexus (and there is not), Bullion's attempt to revive the
20 long-dismissed claims is barred by the statute of limitations.

21 **B. Barrick Gold Has No Contacts with Nevada.**

22 Just as in 2009, Barrick Gold has no contacts in Nevada sufficient to confer personal
23 jurisdiction. Barrick Gold remained a Canadian corporation headquartered in Toronto from its

24 ² Bullion made this same admission – that the claims alleged in the complaint accrued in
25 June 2009 – elsewhere to this Court. *See* Bullion's Opp. to Mot. for Summ. Judg. on
Savings Stat., 3:20-22, 10:7-10, on file, July 27, 2019.

26 ³ Between December 2018 until recently, Bullion attempted to effectuate services on
27 Barrick Gold through the Hague Convention.

28 ⁴ Barrick Gold was served at its Toronto, Canada, headquarters through the
Hague Convention protocols.

1 dismissal from the federal action in 2009 to December 2018 (and to date). (*Compare*
2 Veenman Decl., Ex. A, with Declaration of Dana Stringer, Barrick Gold's current corporate
3 secretary, ¶¶ 2-3, Exhibit E hereto.) Barrick Gold remained the ultimate parent company of a
4 worldwide group of separate subsidiaries, and it remained without any contacts in Nevada except
5 through those subsidiaries. (*Compare* Veenman Decl., Ex. A, with Stringer Decl. ¶ 21.)

6 At the time Bullion filed the latest complaint in December 2018, Barrick Gold had eight
7 officers, seven of which were located in Toronto, one was located in Florida, and none were
8 located in Nevada. (Stringer Decl., Ex. E ¶ 4.) Barrick Gold had thirteen members on its Board
9 of Directors. Three of Barrick Gold's directors lived in Toronto, Canada; two lived in Nevada;
10 five lived in other areas of the United States (New York, Florida, California, Colorado, and
11 Pennsylvania), and three resided outside of the United States and Canada (Argentina, Chile and
12 the Dominican Republic). (*Id.* ¶ 6.)

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

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

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

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

1 When Bullion filed its complaint here in December 2018, Barrick Gold still had no
2 presence in Nevada, except through a lengthy chain of separately-incorporated U.S. subsidiaries.
3 Barrick Gold was (and is) the ultimate parent company of several companies that operate in
4 Nevada. For example, the Goldstrike mine, which is located near Elko, Nevada, is owned by
5 Goldstrike, a Colorado corporation. Goldstrike is a subsidiary of Defendant Barrick Gold
6 Exploration, Inc. a Delaware corporation, which is itself a subsidiary of ABX Financero Inc.
7 ("ABX"), also a Delaware corporation. ABX is a direct subsidiary of Barrick Gold. (*Id.* ¶ 21.)

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

13 III. ARGUMENT

14 A. Nevada Courts Lack General and Specific Jurisdiction over Barrick Gold 15 Based on its Lack of Contacts.

16 Bullion's claims against Barrick Gold must be dismissed because, as Bullion conceded
17 long ago, courts in Nevada lack personal jurisdiction over Barrick Gold. "Jurisdiction over a
18 nonresident defendant is proper *only if* the plaintiff shows that the exercise of jurisdiction satisfies
19 the requirements of Nevada's long-arm statute and does not offend principles of due process."
20 *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014) (emphasis
21 added). Because Nevada's long-arm statute is coterminous with the federal constitutional limits, a
22 defendant must have such "minimum contacts" with Nevada that it could reasonably anticipate
23 being haled into court in the state, consistent with "traditional notions of fair play and substantial
24 justice." *Arbella v. Mut. Ins. Co. v. Eighth Jud. Dist. Ct.*, 122 Nev. 509, 512, 134 P.3d 710, 712
25 (2006) (internal marks omitted).

26 Courts analyze personal jurisdiction over a non-resident defendant under two theories:
27 general and specific personal jurisdiction. *Viega*, 130 Nev. at 375, 328 P.3d at 1156. Bullion
28 appears to be relying on specific jurisdiction as the basis for its action against all defendants.

1 (See Compl. ¶ 8 ("This Court has jurisdiction over defendants under NRS 14.065(1) and the
2 United States Constitution because defendants have sufficient minimum contacts directed toward
3 Nevada, *and this suit arises out of those Nevada contacts.*" (emphasis added)).) However, the
4 Court has neither general nor specific jurisdiction over Barrick Gold, and therefore the complaint
5 must be dismissed as to it.

6 *I. Nevada courts lack general jurisdiction over Barrick Gold based on its*
7 *(lack of) Nevada contacts.*

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

18 Under this strict standard, there is no basis for holding that Barrick Gold is subject to
19 general jurisdiction in Nevada. Barrick Gold is a corporation organized under the laws of
20 British Columbia, Canada, with its principal place of business in Ontario, specifically Toronto.
21 (Stringer Decl., Ex. E ¶¶ 2-3.) It does not have any officers in Nevada. (*Id.* ¶ 3.) It does not have
22 any employees, offices, equipment, operations, or property in Nevada; it pays no taxes in Nevada;
23 and it does not conduct any mining, exploration, or similar activities in Nevada. (*Id.* ¶¶ 12-22.)
24 However characterized, Barrick Gold's contacts with Nevada are not so "continuous and
25 systematic" as to make it "at home" in Nevada.⁵

26
27 ⁵ In *Daimler AG*, the United States Supreme Court considered other exceptional
28 circumstances that might permit the exercise of general jurisdiction over a foreign company due
to the contacts of its in-state subsidiary. 571 U.S. at 134-35. Although some courts had
previously recognized an agency/control theory of general jurisdiction, which allowed for the

2. *Nevada courts also lack specific jurisdiction over Barrick Gold due to its
subject lack of contacts with the forum.*

"Specific personal jurisdiction arises when the defendant purposefully enters the forum's market or establishes contacts in the forum and affirmatively directs conduct there, and the claims arise from that purposeful contact or conduct." *Viega*, 130 Nev. at 375, 328 P.3d at 1157. In determining whether exercising specific jurisdiction is consistent with the Due Process Clause, "courts focus on the relationship among the defendant, the forum, and the litigation." *Eat Right Foods, Ltd. v. Whole Foods Mkt., Inc.*, No. C13-2174RSM, 2014 WL 12027447, at *2 (W.D. Wash. Sept. 15, 2014) (citations omitted); *Dogra v. Liles*, 129 Nev. 932, 937, 314 P.3d 952, 955 (2013) ("Nevada may exercise specific jurisdiction over a nonresident defendant if the defendant purposefully avails himself or herself of the protections of Nevada's laws, or purposefully directs her conduct towards Nevada, and the plaintiff's claim actually arises from that purposeful conduct.").

The first question in the analysis is whether Barrick Gold itself has adequate contacts with Nevada. As demonstrated, Barrick Gold has *no contacts* with Nevada, much less legally significant contacts. Furthermore, Bullion does not allege any facts suggesting that Barrick Gold, as distinguished from its subsidiaries, has the requisite contacts. Indeed, as established by the Declaration of Mr. Stringer, Barrick Gold has never done any of the acts alleged in the complaint in Nevada, including entering into contracts in the state, acquiring mining claims or interests in the state, or operating any mines in the state. (Stringer Decl., Ex. E ¶¶ 13-22.) Though certain of Barrick Gold's indirect subsidiaries have done these things, there are no allegations – and certainly no evidence – that Barrick Gold itself has. To the contrary, the evidence submitted with Barrick Gold's motion conclusively establishes that Barrick Gold has not taken these actions in Nevada at any time.

Moreover, the Nevada Supreme Court has recognized that "[c]orporate entities are presumed separate, and thus, the mere 'existence of a relationship between a parent company and

exercise of general jurisdiction over a foreign parent if an in-state subsidiary was merely the parent's agent in the forum, the Supreme Court rejected that basis. *Id.* at 155-56.

1 its subsidiaries is not sufficient to establish personal jurisdiction over the parent on the basis of
2 the subsidiaries' minimum contacts with the forum.'" *Viega*, 130 Nev. at 375, 328 P.3d at 1157
3 (quoting *Doe*, 248 F.3d at 925). And, importantly, Bullion has alleged *absolutely no facts* that
4 connect Barrick Gold to this action, the claims, or this State other than it is a parent company of
5 another defendant, ABX. Without any factual basis for jurisdiction alleged in its own Complaint
6 – a pleading Bullion has had a decade to consider and rewrite – and given that Bullion opted to
7 dismiss these same claims against Barrick Gold ten years ago, there can be no legitimate
8 argument or exception to allow Bullion to proceed against Barrick Gold now.

9 Additionally, because Bullion cannot establish that Barrick Gold has the necessary
10 minimum contacts with Nevada, it also cannot satisfy the second step in the personal jurisdiction
11 analysis – drawing a nexus between those acts and the claims in the case. Accordingly, the
12 indisputable evidence establishes that the Court lacks jurisdiction, whether general or specific,
13 based on Barrick Gold's own contacts with Nevada.

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

16 Because of Bullion's acknowledgement that Nevada courts lack personal jurisdiction over
17 Barrick Gold, and its choice to voluntarily dismiss Barrick Gold from the action back in 2009,
18 Bullion's delayed suit against Barrick Gold is barred by the statute of limitations. The Court need
19 look no further than Bullion's own complaint to confirm its claims against Barrick Gold are time
20 barred. When the defense of the statute of limitations appears from the complaint itself, a motion
21 to dismiss is proper. *Kellar v. Snowden*, 87 Nev. 488, 491, 489 P.2d 90, 92 (1971); *In re Amerco*
22 *Deriv. Litig.*, 127 Nev. 196, 228, 252 P.3d 681, 703 (2011) ("If the allegations contained in the
23 amended complaint demonstrate that the statute of limitations has run, then dismissal upon the
24 pleadings is appropriate.").

25 In Nevada, the limitations period on "[a]n action upon a contract, obligation or liability
26 founded upon an instrument in writing" is six years. NRS 11.190(1)(b). Similarly, the statute of
27 limitations for Bullion's purported declaratory relief judgment claim premised on the same breach
28 of contract claim is six years. *Bank of New York Mellon v. Ruddell*, 380 F. Supp. 3d 1096, 1100

1 (D. Nev. 2019) (discussing application of limitations periods to declaratory judgment claims
2 under Nevada law). Moreover, the breach of the covenant of good faith and fair dealing and
3 unjust enrichment are subject to a four-year statute of limitation. NRS 11.190(2)(c); *Schumacher*
4 *v. State Farm Fire & Cas. Co.*, 467 F. Supp. 2d 1090, 1094-95 (D. Nev. 2006).⁶

5 For purposes of this motion, and as alleged in Bullion's complaint, the purported claims
6 against Barrick Gold accrued on the date they were previously filed in the federal action –
7 June 22, 2009. (Compl. ¶ 30). Yet, after filing these claims against Barrick Gold in June 2009,
8 Bullion stipulated to dismiss Barrick Gold, and during the next decade or so failed to enforce
9 these supposed claims or rights. Nothing prevented Bullion (other than its strategic decision not
10 to do so) from refiling these claims against Barrick Gold within the applicable statute of
11 limitations. The very longest Bullion had under the applicable statute of limitations to enforce
12 those claims was six years or until June 2015, at the latest. Rather than timely enforce its rights,
13 Bullion filed its claims in this case in late 2018, nearly three years too late under NRS 11.190.
14 Dismissal is more than warranted here given Bullion's strategic decision to sit upon its purported
15 claims.

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26 ⁶ Bullion's purported cause of action for an "accounting" is not an independent claim but
27 rather an equitable remedy dependent upon the success of one of Bullion's other claims. *See*
28 *Cueto-Reyes v. All My Sons Moving Co. of LV.*, No. 2:09-CV-2299-ECR-RJJ, 2010 WL 11579989, at *5 (D. Nev. Apr. 5, 2010) ("An accounting is an equitable remedy, not an independent cause of action."). Because Bullion's other claims are barred under the applicable statute of limitations, its equitable remedy for accounting similarly fails.

1 **IV. CONCLUSION**

2 Accordingly, Barrick Gold respectfully requests the Court dismiss it from this action.
3 Bullion's attempt to resurrect claims it voluntarily dismissed against Barrick Gold nearly a decade
4 ago fails. Those claims are barred under the applicable statute of limitations. But, irrespective of
5 this fatal fact, just as Bullion confessed in 2009, Barrick Gold is not subject to personal jurisdiction
6 in Nevada.

7 DATED this 11th day of October, 2019.

8 PISANELLI BICE PLLC

9
10 By: 

James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
Dustin H. Holmes, Esq., Bar No. 12776
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14 *Attorneys for Barrick Gold Corporation*
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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 11th day of October, 2019, I filed a true and correct copy of the foregoing **BARRICK GOLD CORPORATION'S MOTION TO DISMISS** with the Clerk of the Court through the Court's CM/ECF system, which sent electronic notification to all registered users as follows:

Kristine E. Johnson, Esq.
Brandon J. Mark, Esq.
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Ashley C. Nikkel, Esq.
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Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
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An employee of Pisanelli Bice PLLC

EXHIBIT A

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5 Francis M. Wikstrom (Utah Bar No. 3462; *pro hac vice* pending)
6 Michael P. Petrogeorge (Utah Bar No. 8870; *pro hac vice* pending)
7 Brandon J. Mark (Utah Bar No. 10439; *pro hac vice* pending)
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9 Attorneys for Defendants Barrick Gold Corporation and Barrick
10 Goldstrike Mines Inc.

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13
14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF NEVADA
16

17 BULLION MONARCH MINING, INC.,

18 Plaintiff,

19 v.

20 NEWMONT USA LTD., *et al.*,

21 Defendants.

Case No. CV-N-08-00227-ECR-VPC

**DECLARATION OF SYBIL E.
VEENMAN IN SUPPORT OF RULE
12(b)(2) MOTION TO DISMISS ALL
CLAIMS AGAINST BARRICK GOLD
CORPORATION FOR LACK OF
PERSONAL JURISDICTION**

22 I, Sybil E. Veenman, declare to the best of my knowledge as follows:
23

24 1. I am over the age of eighteen years old, and I am authorized to make this
25 declaration on behalf of Barrick Gold Corporation ("BGC").

26 2. Currently, I hold the positions of Senior Vice President, Assistant General
27 Counsel, and Secretary with BGC. I have been the corporate Secretary of BGC since 1995.
28

1 3. Through my duties with BGC, I am familiar with the business operations of BGC,
2 as well as its relationship with Barrick Goldstrike Mines Inc. ("Goldstrike").

3 4. BGC is incorporated in Ontario, Canada, and its headquarters are located in
4 Toronto, Ontario.

5 5. BGC exists as a parent holding company, managing its investments and interests
6 in various wholly and partially owned subsidiary companies.

7 6. Although most of BGC's subsidiary companies are involved in the gold mining
8 industry, BGC holds a diverse portfolio of interests and investments.

9 7. BGC's subsidiary companies operate in numerous countries throughout the world
10 and operate and exist under the laws of those jurisdictions.

11 8. BGC is not licensed to do business in Nevada and does not regularly carry out,
12 solicit, or transact business in the state.

13 9. BGC does not own any real or tangible personal property in Nevada, nor does it
14 hold any bank accounts in Nevada.

15 10. BGC does not have any employees in Nevada and does not have an office,
16 address, or telephone listing within the state.

17 11. BGC does not sell any goods or services in Nevada.

18 12. BGC has never paid income or property taxes in Nevada.

19 13. BGC does not itself engage in mining or processing activities, operate mining or
20 processing facilities, or participate in activities ancillary to mining or processing activities within
21 Nevada or the United States, nor does it own any equipment or facilities to do so.

22 14. BGC does not buy, sell, or trade commodities of any type, including gold or other
23 precious metals, in Nevada.

24 15. There are two intermediate corporate parents between Goldstrike and BGC.

25 16. Goldstrike is a Colorado corporation and is a wholly owned subsidiary of Barrick
26 Gold Exploration Inc. ("Exploration"), which is incorporated in Delaware.

27

28

1 17. Exploration is a wholly owned subsidiary of ABX Financeco Inc. ("ABX"), also a
2 Delaware corporation.

3 18. ABX is a wholly owned subsidiary of BGC.

4 19. Goldstrike and BGC observe and comply with all applicable requirements for
5 maintaining their separate corporate existence and identities.

6 20. Although BGC, consistent with its position as the ultimate parent company,
7 monitors the overall business strategy of Goldstrike, Goldstrike's officers and managers perform
8 the day-to-day management of the company and direct and control the company's activities in
9 Nevada.

10 21. Goldstrike is not authorized to act for or on behalf of BGC.

11 22. BGC and Goldstrike maintain separate corporate by-laws, minutes, and records,
12 and each company maintains separate bank accounts.

13 23. None of the directors of BGC is also a director of Goldstrike.

14 24. Any financial transactions between BGC and Goldstrike are documented on the
15 appropriate financial reports of the two companies to ensure the funds are separately tracked and
16 accounted for by each company.

17 25. Goldstrike has substantial assets in Nevada, including the Goldstrike Mine located
18 north of Carlin, Nevada, and is capable of satisfying any judgments that may be entered against it
19 in this case.

20 I declare under penalty of perjury under the laws of the United States of America that the
21 foregoing is true and correct.

22 Executed on this 16th of July 2009.

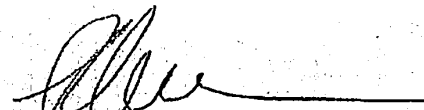
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25 
26 Sybil E. Veenman
27
28

EXHIBIT B

1 Clayton P. Brust, Esq. (SBN 5234)
2 **ROBISON, BELAUSTEGUI, SHARP & LOW**
3 71 Washington Street
4 Reno, Nevada 89503
5 Tele: 775.329.3151
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7 Attorneys for Plaintiff
8 Bullion Monarch Mining, Inc.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BULLION MONARCH MINING, INC., a
Utah corporation,

CASE NO. **CV-N-08-00227-ECR-VPC**

Plaintiff,

vs.

NEWMONT USA LIMITED, a Delaware
corporation, d/b/a NEWMONT MINING
CORPORATION, BARRICK GOLD
CORPORATION, BARRICK
GOLDSTRIKE MINES, INC. and DOES I-
X, inclusive,

Defendant(s).

NEWMONT USA LIMITED, a Delaware
Corporation, dba NEWMONT MINING
CORPORATION,

Counterclaimant,

vs.

BULLION MONARCH MINING, INC., a
Utah corporation.

Counterdefendant.

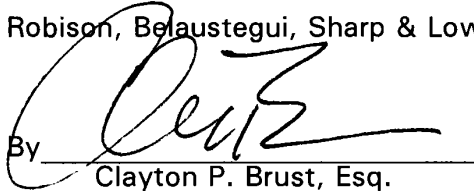
STIPULATION FOR DISMISSAL WITHOUT PREJUDICE; ORDER

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Bullion

1 Monarch Mining, Inc., and Defendant Barrick Gold Corporation, by and through their
2 undersigned counsel, that the claims against Barrick Gold Corporation in the above-
3 entitled action may be, and hereby are, dismissed without prejudice, and each party
4 to pay their own costs and attorney fees.

5
6 Dated this 27th day of July, 2009.

7 Robison, Belaustegui, Sharp & Low

8
9 By 
10 Clayton P. Brust, Esq.
11 Attorneys for Plaintiff
12 Bullion Monarch Mining, Inc.

Dated this 24th day of July, 2009.

Parsons Behle & Latimer

By: s/Michael P. Petrogeorge
Michael P. Petrogeorge, Esq.
Brandon J. Mark, Esq.
Francis Wikstrom, Esq.
Michael Kealy, Esq.
Attorneys for Defendants
Barrick Goldstrike Mines, Inc.,
and Barrick Gold Corporation

13
14
15 **ORDER**

16 **IT IS SO ORDERED.**

17 IT IS FURTHER ORDERED that Defendant Barrick Gold Corporation's
18 Motion to Dismiss (#70) is DENIED as moot.

19
20 Dated this 28th day of July, 2009.

21
22 
23 UNITED STATES DISTRICT JUDGE

EXHIBIT C

1 Clayton P. Brust, Esq. (SBN 5234)
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5 (775) 329-3151
6 Attorneys for Plaintiff
7 Bullion Monarch Mining, Inc.

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10
11 BULLION MONARCH MINING, INC., a
12 Utah corporation,

CASE NO. **CV-N-08-00227-ECR-VPC**

13 Plaintiff,

14 vs.

15
16 NEWMONT USA LIMITED, a Delaware
17 corporation, d/b/a NEWMONT MINING
18 CORPORATION, BARRICK GOLD
19 CORPORATION, BARRICK
20 GOLDSTRIKE MINES, INC and DOES I-
21 X, inclusive,

AMENDED COMPLAINT
[Jury Trial Demanded]

22 Defendant(s).
23 _____/

24 Plaintiff as its complaint alleges:

25 1. Bullion Monarch Mining ("Bullion"), is a Utah corporation doing
26 business in the State of Nevada at all times relevant hereto.

27 2. Newmont USA Limited, a Delaware Corporation, dba Newmont Mining
28 Corporation (herein after "Newmont") is a Delaware Corporation doing business in
the State of Nevada at all times relevant hereto.

2A. Barrick Gold Corporation is a Canadian company and has been doing business in Nevada at all times relevant hereto and Barrick Goldstrike Mines, Inc. (collectively referred to as "Barrick") is a Colorado corporation and has been doing business in Nevada at all times relevant hereto.

3. The true names or capacities, whether individual, corporate, associate, or otherwise, of Defendants designated as DOES I through X are unknown to Plaintiff and therefore Plaintiff sues these Defendants by fictitious names. Plaintiff will amend this Complaint to show the true names and capacities of these Defendants when they have been ascertained.

FACTS

4. On or about May 10, 1979, Bullion's predecessor in interest, Bullion Monarch Company, and Newmont's predecessors in interest, Universal Explorations, Ltd. and Universal Gas, Inc., entered into a royalty agreement ("Agreement") whereby Bullion was to receive a royalty based on production from any mining operations within the Subject Property as described in Exhibit A-1 to the Agreement and the "Area of Interest" described in Exhibit A-2 to the Agreement. A true and correct copy of the Agreement is attached hereto and incorporated herein as Exhibit 1. The term of the Agreement is 99 years.

5. The Area of Interest provision applies to all mining interests acquired by the other parties to the Agreement, or their successors in interest, within the Area of Interest whether by "leasing or purchase of private lands and minerals, or unpatented mining claims." All of such acquired mining interests become subject to the terms and conditions of the Agreement. The Area of Interest is located in

1 Eureka and Elko Counties in the State of Nevada.

2 6. Further, in the event a mining interest from within the Area of Interest
3 was or is used to acquire mining interests outside the Area of Interest, Bullion's
4 royalty interest would also follow to the new property. Upon information and
5 belief, this has occurred.
6

7 7. Paragraph 18 of the Agreement provides that the terms of the
8 Agreement are binding upon the successors of the parties to the Agreement.
9

10 8. Newmont has recognized that it is obligated to pay royalties pursuant
11 to the Agreement and is currently paying Bullion a royalty on those mining claims
12 designated in Exhibit A-1 to the Agreement. However, when Bullion requested a
13 detailed accounting of the royalties being paid by Newmont in or about August of
14 2007, Newmont refused to provide detailed accounting for the royalty it is
15 currently paying pursuant to the Agreement, initially claimed it was not governed by
16 the Agreement, and demanded that Bullion employees only contact Newmont
17 through counsel regarding any royalties Newmont may owe. These claims and
18 demands by Newmont violated the Agreement which allows for Bullion to inquire
19 about the royalty owed and requires Newmont to provide detailed accountings of
20 its mining activities so that Bullion may verify the accuracy of the royalty being paid
21 by Newmont.
22

23 9. Bullion also inquired about whether Newmont was involved in any
24 mining activities in the Area of Interest in or about August of 2007. Until that
25 time, Newmont had failed to reveal that it was involved in any mining activities in
26 the Area of Interest and had concealed such activities from its "reports" of its
27
28

1 mining activities to Bullion. Again, Newmont refused to provide any accounting for
2 mineral production from within the Area of Interest and claimed it was not subject
3 to the Agreement (despite having paid certain minimal royalties pursuant to the
4 Agreement for years). Several weeks later, in September of 2007, Newmont
5 changed its position, provided an entirely different excuse for refusing to pay a
6 royalty upon its mining activities in the Area of Interest, tacitly admitted that it was
7 subject to the Agreement, but still refused to provide any information regarding its
8 activities in the Area of Interest and refused to pay any royalties based upon
9 Newmont's operations in the Area of Interest. Newmont's failure and refusal to
10 provide accountings of its activities in the Area of Interest has prevented Bullion to
11 from ascertaining its rights and determining the exact timing and amount of
12 royalties Newmont owes Bullion arising from Newmont's activities in the Area of
13 Interest.
14
15

16
17 9A. On or about December 23, 1991, High Desert Mineral Resources of
18 Nevada, Inc. entered an agreement with Newmont by which High Desert Mineral
19 Resources of Nevada, Inc. and Newmont agreed to share responsibility for any
20 royalties and obligations due to Bullion pursuant to the Agreement.
21

22 9B. Barrick, through a succession of companies, including, but not limited
23 to Barrick HD Inc. and Barrick Goldstrike Mines, Inc. (a Colorado corporation), is
24 the successor in interest to High Desert Mineral Resources of Nevada, Inc. for
25 purposes of the December 23, 1991 agreement between High Desert Mineral
26 Resources of Nevada, Inc. and Newmont. Further, Barrick is the corporate
27 successor to High Desert Mineral Resources of Nevada, Inc. and, upon information
28

1 and belief took over all responsibilities of High Desert Mineral Resources of Nevada,
2 Inc. in approximately 1995, thereby making Barrick responsible for any royalties
3 and obligations due Bullion pursuant to the Agreement that are not owed by
4 Newmont.
5

6 10. Bullion, Barrick and Newmont are citizens of different states. The
7 amount in controversy in this matter exceeds \$75,000.00. Further, a substantial
8 part, if not all, of the relevant events in this matter occurred in the State of Nevada
9 and all of the property that gives rise to this action is located in the State of
10 Nevada. Accordingly, jurisdiction and venue of this matter are properly in this
11 Court.
12

13 **FIRST CLAIM FOR RELIEF**
14 **(Declaratory Judgment)**

15 11. Plaintiff incorporates the allegations contained in paragraphs 1-10 as if
16 set forth verbatim.

17 12. An actual legal controversy exists between Plaintiff and Defendants as
18 to whether Defendants owe Bullion a royalty and/or compensation for mining
19 activities and production of minerals from property in the Area of Interest.
20

21 13. Bullion and Defendants have adverse legal positions with respect to
22 their existing legal controversy and Bullion has a legally protectible interest as to
23 whether it is entitled to a royalty and/or compensation for mining activities and
24 production from within the Area of Interest.
25

26 14. The existing legal controversy between Plaintiff and Defendants is ripe
27 for judicial determination.
28

1 15. As a result of the parties' dispute as to whether Bullion is entitled to
2 royalties, Bullion seeks a declaratory judgment from this Court declaring that Bullion
3 is entitled to the royalties from one or both of the Defendants for production from
4 within the Area of Interest.

5
6 **SECOND CLAIM FOR RELIEF**
7 **(Breach of Contract)**

8 16. Bullion incorporates the allegations contained in paragraphs 1-15 as if
9 set forth verbatim.

10 17. Defendants are obligated to pay Bullion royalties on mining activities
11 pursuant to the parties' Agreement as described above.

12 18. Defendants have materially breached the terms of the Agreement.

13 19. As a direct and proximate result of Defendants' breach, Bullion has
14 suffered general and special damages in excess of \$75,000.00.

15 20. Bullion has also been forced to retain counsel to pursue this action,
16 and has incurred attorney's fees as a result of Defendants' breach.

17
18 **THIRD CLAIM FOR RELIEF**
19 **(Breach of the Covenant of Good Faith and Fair Dealing)**

20 21. Bullion incorporates the allegations contained in paragraphs 1 through
21 20 as if set forth verbatim.

22 22. Nevada law implies into each contract or agreement a covenant of
23 good faith and fair dealing.

24 23. The Agreement includes an implied, if not express, covenant of good
25 faith and fair dealing.

26 24. The acts and omissions of Defendants, as described above, has
27
28

1 deprived Bullion of benefits which Bullion had bargained for with Defendants'
2 predecessors in interest.

3 25. As a sole, direct and proximate result fo the foregoing, Bullion has
4 been damaged in a sum in excess of \$75,000.00, to be more precisely proven at
5 trial.
6

7 **FOURTH CLAIM FOR RELIEF**
8 **(Unjust Enrichment)**

9 26. Bullion incorporates the allegations contained in Paragraphs 1 through
10 25 as if set forth verbatim.

11 27. Bullion allowed Defendants and Defendants' predecessors in interest
12 to explore and mine in areas where Bullion had established claims and refrained
13 from further exploration and mining activities in the Area of Interest as described
14 above.
15

16 28. Defendants and Defendants' predecessors in interest accepted
17 Bullion's property rights and agreement to refrain from further exploration/mining
18 activities and enjoyed their use.
19

20 29. In exchange for relinquishment of such property rights and exploration
21 and mining rights pursuant to the Agreement, Bullion expected to be paid and is
22 entitled to be paid its royalty for production from the Area of Interest.

23 30. Bullion has not been paid for the amount it has enriched Defendants.
24

25 31. Defendants have been unjustly enriched by Bullion.

26 32. Bullion is entitled to compensation for the amount Defendants have
27 been unjustly enriched.
28

1 33. Bullion has also been forced to retain counsel to pursue this action
2 and has incurred attorney fees as a result of Defendants' actions.

3 **FIFTH CLAIM FOR RELIEF**
4 **(Accounting)**

5 34. Bullion incorporates the allegations contained in paragraphs 1 through
6 33 as if set forth verbatim fully herein.

7 35. Bullion seeks an accounting of all royalties owed to Bullion for mining
8 activities of Defendants in the Area of Interest as described above.

9 36. Bullion has made a demand upon Newmont, and hereby makes a
10 demand upon Barrick, to provide accounting records for Defendants' mining
11 activities in the Area of Interest and Newmont has refused same.

12 37. Bullion seeks an order from this Court directing Defendants to provide
13 an accounting of same.

14 38. Bullion has been required to engage legal counsel to prosecute this
15 action and is entitled to its costs incurred and reasonable attorney's fees.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Bullion prays for judgment against Defendants, as follows:

18 1. For declaratory relief declaring Defendants' obligation to pay
19 royalties based upon production from within the Area of Interest as provided by the
20 Agreement;

21 2. For special and general damages in an amount in excess of seventy-
22 five thousand dollars (\$75,000.00) according to proof at trial;

23 3. For prejudgment interest;

4. An order directing Defendants to provide an accounting;
5. For reasonable attorney fees and costs of suit incurred herein;
6. A jury trial on all issues so triable; and
7. For such other and further relief as the Court determines to be appropriate under the circumstances.

DATED this 22nd day of June, 2009.

ROBISON, BELAUSTEGUI, SHARP & LOW

By 

Clayton P. Brust, Esq.

Attorneys for Plaintiff
Bullion Monarch Mining, Inc.

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused a true copy of **AMENDED COMPLAINT [Jury Trial Demanded]** to be served on all parties to this action by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

☒ personal delivery/hand delivery

_____ facsimile (fax)

_____ Federal Express/UPS or other overnight delivery

_____ Reno Carson Messenger Service

Holland & Hart, LLP
Matthew B. Hippler, Esq.
Shane Biornstad, Esq.
5441 Kietzke Lane, 2nd Flr.
Reno, NV 89511

Dated this 22nd day of June, 2009.

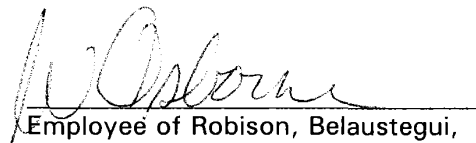

Employee of Robison, Belaustegui,
Sharp & Low

EXHIBIT "1"

EXHIBIT "1"

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

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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 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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RENO AND ELKO, NEVADA

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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. . Also see paragraph 6

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 PO 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:

C.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.

C.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.

^{not}
D. 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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^{net} 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.

^{net} 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 percenta

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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 receipt 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 payments 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 (Pancan

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.

*What are
The Poulsen
Properties?*

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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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

CAMSELL 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: K. 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. Monix
TITLE: PRESIDENT

POLAR RESOURCES CO., a Nevada corporation

BY: [Signature]
TITLE: President

UNIVERSAL GAS (MONTANA), INC. a Montana corporation

BY: [Signature]
TITLE: President

CAMSELL RIVER INVESTMENTS Ltd. a Canadian corporation

BY: K. H. Lambert
TITLE: President

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LAMBERT MANAGEMENT LTD., a Canadian corporation

BY: KH Lambert

TITLE: President

ELTEL HOLDINGS LTD., a Canadian corporation

BY: KH Lambert

TITLE: Director + Secretary

UNIVERSAL EXPLORATIONS, LTD. a Canadian corporation

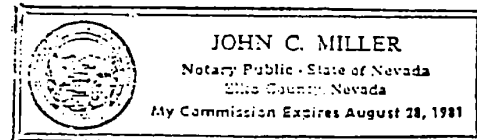
BY: [Signature]

TITLE: [Signature]

STATE OF Nevada)
COUNTY OF Elko) SS.

On May 11, 1979, personally appeared before me, a Notary Public, R.O. Morris, 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



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RENO AND ELKO, NEVADA

05/11/79

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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

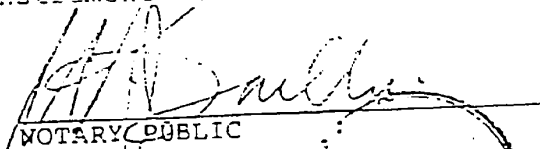
PROVINCE
STATE OF ALBERTA)
COUNTY OF _____) SS.

On MAY 28, 1979, personally appeared before me, a Notary Public, Joseph A. Mercier, 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

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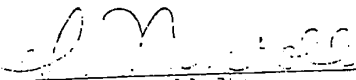
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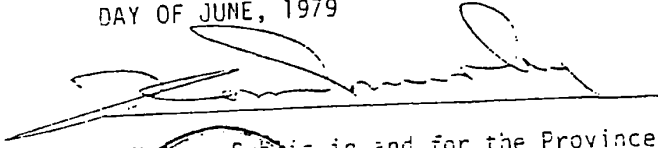
AFFIDAVIT OF EXECUTION

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



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PROVINCE
~~STATE~~ OF ALBERTA)
COUNTY OF _____) SS.

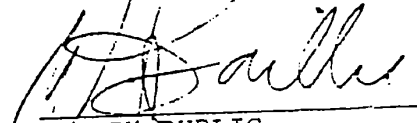
On MAY 17, 1979, personally appeared before me, a Notary Public, KENNETH H. LAMBERT, a duly qualified and acting officer of LAMBERT MANAGEMENT LTD., who acknowledged to me that he executed the above instrument in that capacity.


NOTARY PUBLIC



PROVINCE
~~STATE~~ OF ALBERTA)
COUNTY OF _____) SS.

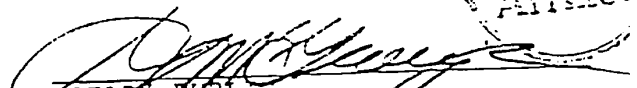
On MAY 17, 1979, personally appeared before me, a Notary Public, KENNETH H. LAMBERT, a duly qualified and acting officer of ELTEL HOLDINGS LTD., who acknowledged to me that he executed the above instrument in that capacity.

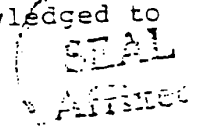

NOTARY PUBLIC



PROVINCE
~~STATE~~ OF ALBERTA)
COUNTY OF _____) SS.

On MAY 17, 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.


NOTARY PUBLIC



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RENO AND ELKO, NEVADA

PA 0095

EXHIBIT A-1SUBJECT 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>
	100%	Royalty
Big Jim	"	"
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>
			77%	Royalty
Big Six No. 3	783757	4332	"	"
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

PA 0096

EXHIBIT A-2

AREA OF INTEREST

check + verify

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

LAMBERT MANAGEMENT LTD.

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324 - 8 AVENUE S.W.
CALGARY, ALBERTA
CANADA T2P 2Z2

Telephone: (403) 454-26
13716 - 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 f

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

BOOK 71 PAGE 31

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.

/4

BOOK 71 PAGE 32

- 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:

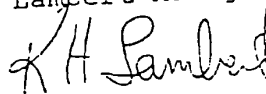
11) This Agreement shall be interpreted in accordance with the laws of the Province of Alberta.

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,

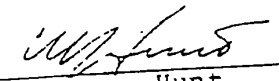
Lambert Management Ltd.


K. H. Lambert
President

/mjm
encl:


Accepted this ~~17~~ day of March, 1979

Polar Resources Ltd.


C. Warren Hunt
President

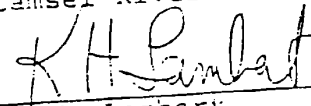
Accepted this 14th day of March, 1979

Eltel Holdings Ltd.


K. H. Lambert
Secretary

Accepted this 14th day of March, 1979

Camsel River Investments


K. H. Lambert
President

BOOK 71 PAGE 33

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EDMONTON, AL
CANADA T5N

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 1 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.

K. H. Lambert
K. H. Lambert

/mjm

71 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.

KH Lambert
KH: Lambert
President

1070 SILVER STREET
ELKO, NEVADA 89801

(702) 738-8712

April 6, 1979

Mr. K. H. Lambert
Lambert Management Ltd.
5908, 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.

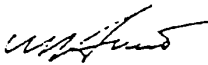
In accordance with our telephone conversation this morning, in which the writer pointed out that clauses 7b and 7c of the letter agreement of March 14, 1979 were unduly broad in that they might be construed to include Polar's assets which had not been acquired by the joint venture nor in the period of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


C. Warren Hunt, Pres.

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

BOOK 71 PAGE 36

LAMBERT MANAGEMENT LTD.

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Telephone: (403) 454-261
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:

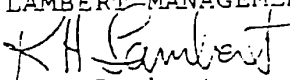
RE: Gold Claims Lynn Mining District
Eureka County, Nevada

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.

K.H. Lambert
President

KHL/rs

Enc.

Accepted this 11th day of April, 1979

POLAR RESOURCES LTD.

PER: 

BOOK 71 PAGE 37

EXHIBIT D

1 PARSONS BEHLE & LATIMER

2 Michael R. Kealy (Nevada Bar No. 0971)
3 50 West Liberty Street, Suite 750
4 Reno, NV 89501
Telephone: (775) 323-1601
Facsimile: (775) 348-7250

5 Francis M. Wikstrom (Utah Bar No. 3462; *pro hac vice* pending)
6 Michael P. Petrogeorge (Utah Bar No. 8870; *pro hac vice* pending)
7 Brandon J. Mark (Utah Bar No. 10439; *pro hac vice* pending)
8 One Utah Center
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Salt Lake City, UT 84111
Telephone: (801) 536-6700
Facsimile: (801) 536-6111
9 Email: ecf@parsonsbehle.com

10 Attorneys for Defendants Barrick Gold Corporation and Barrick
11 Goldstrike Mines Inc.

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF NEVADA
14

15 BULLION MONARCH MINING, INC.,

16 Bullion Monarch,

17 v.

18 NEWMONT USA LTD., *et al.*,

19 Defendants.
20
21

Case No. CV-N-08-00227-ECR-VPC

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF RULE 12(b)(2)
MOTION TO DISMISS ALL
CLAIMS AGAINST BARRICK
GOLD CORPORATION FOR
LACK OF PERSONAL
JURISDICTION**

22 Defendant Barrick Gold Corporation ("BGC"), by and through its undersigned counsel,
23 respectfully submits this memorandum of points and authorities in support of its motion to
24 dismiss the claims asserted against BGC in Bullion Monarch Mining, Inc.'s ("Bullion Monarch"),
25 Amended Complaint pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure.
26
27
28

4820-5523-1492.3

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INTRODUCTION

Bullion Monarch has, in its Amended Complaint, lumped together Barrick Goldstrike Mines Inc. ("Goldstrike") and BGC, treating them as one indistinguishable entity. But the truth is that these entities are separate parties with vastly different levels of contact with this Nevada forum. Unlike Goldstrike, which has extensive mining operations in Nevada, as well as employees, offices, and equipment to carry out those mining operations, BGC has never owned or operated any mine in Nevada, has no offices, employees, or property in the state, and conducts no regular business in this forum.

Bullion Monarch's only basis for naming BGC as a defendant appears to be that BGC is the ultimate parent of Goldstrike. But there is no reason for BGC to be a party to this lawsuit. Goldstrike is the only Barrick-related entity that has any connection to the mining properties that are the subject of Bullion Monarch's claims and the only Barrick-related entity that has any potential exposure in this case.¹ Goldstrike has substantial assets in the state of Nevada, and there is no question that it could satisfy any judgment that may be entered against it and in favor of Bullion Monarch in this case. BGC is not, under the law, held to answer for Goldstrike's activities, and there is no reason to require BGC to litigate in this forum.

It would be unconstitutional for this Court to assert personal jurisdiction over BGC in this matter. BGC is a Canadian holding company with significant investments around the world, primarily in the gold mining sector. BGC itself, however, does not own or operate gold mines or related facilities. Instead, like most parent holding companies, BGC owns the stock of other companies, and those companies own and operate the mines under the management and supervision of their officers and directors. BGC does not do business, sell or buy goods or services, pay taxes, employ staff, or hold any bank accounts in Nevada. Simply stated, BGC has no direct presence whatsoever in the state. Given the dearth of contacts between the company and this forum, BGC is not subject to general personal jurisdiction in this forum. Likewise,

¹ Goldstrike concedes, through its simultaneously filed Answer, that it is the corporate successor of High Desert Mineral Resources of Nevada, Inc. Although Goldstrike denies that this fact renders it a party to the 1979 agreement, or obligates it to pay any royalties to Bullion Monarch, Goldstrike concedes that insofar as any liability is ultimately found, it is Goldstrike (not BGC) that is bound.
4820-5523-1492.3

1 because BGC has had virtually no contacts with the Nevada forum, particularly contacts related to
2 the claims asserted in this lawsuit, this Court lacks specific personal jurisdiction over the
3 company.

4 For all of the reasons set forth below, constitutional due process guarantees require that
5 the Court refuse to exercise personal jurisdiction over BGC and dismiss all of Bullion Monarch's
6 claims against BGC in this action.

7 **STATEMENT OF FACTS**

8 1. BGC is Canadian company incorporated in Ontario, Canada. (Am. Compl. ¶ 2A;
9 Declaration of Sybil E. Veenman, Senior Vice President, Assistant General Counsel, and
10 Secretary of BGC ("Veenman Decl.") ¶ 4, attached as **Exhibit 1** hereto.)

11 2. BGC's headquarters are located in Toronto, Canada. (Veenman Decl. ¶ 4.)

12 3. BGC exists as a parent holding company, managing its investments and interests
13 in various wholly and partially owned subsidiary companies. (Veenman Decl. ¶ 5.)

14 4. Although most of BGC's subsidiary companies are involved in the gold mining
15 industry, BGC holds a diverse portfolio of interests and investments. (Veenman Decl. ¶ 6.)

16 5. BGC's subsidiary companies operate in numerous countries throughout the world
17 and operate and exist under the laws of those jurisdictions. (Veenman Decl. ¶ 7.)

18 6. BGC is not licensed to do business in Nevada and does not regularly carry out,
19 solicit, or transact business in the state. (Veenman Decl. ¶ 8.)

20 7. BGC does not own any real or tangible personal property in Nevada, nor does it
21 hold any bank accounts in Nevada. (Veenman Decl. ¶ 9.)

22 8. BGC does not have any employees in Nevada and does not have an office,
23 address, or telephone listing within the state. (Veenman Decl. ¶ 10.)

24 9. BGC does not sell any goods or services in Nevada. (Veenman Decl. ¶ 11.)

25 10. BGC has never paid income or property taxes in Nevada. (Veenman Decl. ¶ 12.)

26 11. BGC does not itself engage in mining or processing activities, operate mining or
27 processing facilities, or participate in activities ancillary to mining or processing activities within
28

1 Nevada or the United States, nor does it own any equipment or facilities to do so. (Veenman
2 Decl. ¶ 13.)

3 12. BGC does not buy, sell, or trade commodities of any type, including gold or other
4 precious metals, in Nevada. (Veenman Decl. ¶ 14.)

5 13. There are two intermediate corporate parents between Goldstrike and BGC.
6 (Veenman Decl. ¶ 15.)

7 14. Goldstrike is a Colorado corporation and is a wholly owned subsidiary of Barrick
8 Gold Exploration Inc. ("Exploration"), which is incorporated in Delaware. (Veenman Decl.
9 ¶ 16.)

10 15. Exploration is a wholly owned subsidiary of ABX Financeco Inc. ("ABX"), also a
11 Delaware corporation. (Veenman Decl. ¶ 17.)

12 16. ABX is a wholly owned subsidiary of BGC. (Veenman Decl. ¶ 18.)

13 17. Goldstrike and BGC observe and comply with all applicable requirements for
14 maintaining their separate corporate existence and identities. (Veenman Decl. ¶ 19.)

15 18. Although BGC, consistent with its position as the ultimate parent company,
16 monitors the overall business strategy of Goldstrike, Goldstrike's officers and managers perform
17 the day-to-day management of the company and direct and control the company's activities in
18 Nevada. (Veenman Decl. ¶ 20.)

19 19. Goldstrike is not authorized to act for or on behalf of BGC. (Veenman Decl.
20 ¶ 21.)

21 20. BGC and Goldstrike maintain separate corporate by-laws, minutes, and records,
22 and each company maintains separate bank accounts. (Veenman Decl. ¶ 22.)

23 21. None of the directors of BGC is also a director of Goldstrike. (Veenman Decl.
24 ¶ 23.)

25 22. Any financial transactions between BGC and Goldstrike are documented on the
26 appropriate financial reports of the two companies to ensure the funds are separately tracked and
27 accounted for by each company. (Veenman Decl. ¶ 24.)

23. Goldstrike has substantial assets in Nevada, including the Goldstrike Mine located north of Carlin, Nevada, and is capable of satisfying any judgments that may be entered against it in this case. (Veenman Decl. ¶ 25.)

ARGUMENT

I. PROCEDURAL ASPECTS OF MOTIONS UNDER RULE 12(b)(2)

Bullion Monarch bears the burden of establishing that the Court has personal jurisdiction over each Defendant. Doe v. Unocal Corp., 248 F.3d 915, 922 (9th Cir. 2001). In determining whether Bullion Monarch has met its burden, this Court “must analyze whether personal jurisdiction exists over each defendant separately.” Fze v. Buchan, 602 F. Supp. 2d 1186, 1191 (D. Nev. 2009) (citing Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd., 328 F.3d 1122, 1130 (9th Cir. 2003)).

Although the Court must credit any uncontroverted allegations of fact contained in Bullion Monarch’s Amended Complaint, it “may not assume the truth of allegations in a pleading which are contradicted by affidavit.” Alexander v. Circus Circus Enters., Inc., 972 F.2d 261, 262 (9th Cir. 1992) (internal quotation marks omitted); Fze, 602 F. Supp. 2d at 1191. Thus, insofar as the Declaration of Sybil Veenman undermines the scant, conclusory allegations of personal jurisdiction contained in Bullion Monarch’s Amended Complaint, the Declaration controls the analysis.

II. THE BASIC LEGAL FRAMEWORK APPLICABLE TO THE EXERCISE OF PERSONAL JURISDICTION

In cases in which this Court’s subject-matter jurisdiction is alleged to exist by virtue of diversity of citizenship, 28 U.S.C. § 1332, “a federal court applies the personal jurisdiction rules of the forum state provided the exercise of jurisdiction comports with due process.” Scott v. Breeland, 792 F.2d 925, 927 (9th Cir. 1986); Fze, 602 F. Supp. 2d at 1191-92. Ordinarily, this involves two inquiries: first, whether the forum state’s long-arm statute permits the exercise of personal jurisdiction, and second, whether the exercise of jurisdiction violates the due process protections of the United States Constitution. Data Disc, Inc. v. Sys. Tech. Assoc., Inc., 557 F.2d 1280, 1286 (9th Cir. 1977).

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- 4 -

1 Because “Nevada’s long arm statute has been liberally construed to reach the outer limits
 2 of federal constitutional due process, . . . the essential inquiry [in this case] becomes whether the
 3 exercise of jurisdiction comports with the defendant’s constitutional due process rights.” Zuffa,
 4 LLC v. Showtime Networks, Inc., No. 2:07-cv-00369, 2007 WL 2406812, at *6 (D. Nev. Aug.
 5 17, 2007); see also Trump v. Eighth Jud. Dist. Ct., 857 P.2d 740, 747 (Nev. 1993) (“Nevada’s
 6 long-arm statute has been construed to extend to the outer reaches of due process . . .”).

7 The Court may exercise personal jurisdiction over BGC only if Bullion Monarch
 8 establishes that the Court has either general or specific jurisdiction over the company. Dole Food
 9 Co. v. Watts, 303 F.3d 1104, 1111 (9th Cir. 2002). For the Court to exercise general personal
 10 jurisdiction over BGC, Bullion Monarch “must demonstrate [that BGC] has sufficient contacts to
 11 ‘constitute the kind of continuous and systematic general business contacts that approximate
 12 physical presence’” in the forum. Fze, 602 F. Supp. 2d at 1192 (quoting Glencore Grain
 13 Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284 F.3d 1114, 1124 (9th Cir. 2002) (internal
 14 quotation marks omitted)). “The standard for establishing general jurisdiction is fairly high . . .”
 15 Bancroft & Masters, Inc. v. Augusta Nat’l Inc., 223 F.3d 1082, 1086 (9th Cir. 2000) (internal
 16 quotation marks omitted); see also Trump, 857 P.2d at 748 (“General jurisdiction will only lie
 17 where the level of contact between the defendant and the forum state is high.”)

18 Absent a showing that BGC has a virtual physical presence in Nevada, a showing which
 19 Bullion Monarch cannot make, it must establish that the Court may properly exercise specific
 20 jurisdiction over BGC for purposes of this lawsuit. To establish specific jurisdiction, Bullion
 21 Monarch must show that BGC did “some act or consummate[d] some transaction within the
 22 forum . . . by which [it] purposefully avail[ed it]self of the privilege of conducting activities in the
 23 forum” and that the asserted claim “arises out of or results from” that act. See, e.g., Doe, 248
 24 F.3d at 923.

25 As set forth more fully below, Bullion Monarch cannot establish a proper basis for the
 26 exercise of general or specific jurisdiction against BGC in this case. This Court should therefore
 27 grant BGC’s motion and dismiss all of Bullion Monarch’s claims against BGC for lack of
 28 personal jurisdiction.

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1 **III. THIS COURT LACKS GENERAL PERSONAL JURISDICTION OVER BGC**

2 **A. BGC Has Never Had Systematic Or Continuous Contacts With the Nevada**
 3 **Forum.**

4 In determining whether a litigant has had systematic and continuous contacts with the
 5 forum sufficient to subject the party to general jurisdiction, courts have developed a flexible list
 6 of salient factors. Courts consider such factors as “whether the defendant makes sales, solicits or
 7 engages in business in the state, serves the state’s markets, designates an agent for service of
 8 process, holds a license, or is incorporated there.” Bancroft & Masters, Inc., 223 F.3d at 1086;
 9 see also In re W. States Wholesale Natural Gas Antitrust Litig., 605 F. Supp. 2d 1118, 1131 (D.
 10 Nev. 2009) (hereinafter “Natural Gas Litig.”) (same).

11 Other pertinent factors include whether the defendant (1) has an office or employees
 12 within the forum, Miller v. DePuy Spine, Inc., No. 2:07-cv-01639, 2008 WL 2761018, at *3 (D.
 13 Nev. July 11, 2008); (2) has a mailing address or telephone listing in the forum, Natural Gas
 14 Litig., 605 F. Supp. 2d at 1127; (3) owns property within the forum, China N.E. Petroleum
 15 Holding, Ltd. v. Topworth Assets Ltd., No. 2:06-cv-01070, 2007 WL 1746332, at *1 (D. Nev.
 16 June 14, 2007); or (4) has paid taxes or holds bank accounts in the forum, Bancroft & Masters,
 17 Inc., 223 F.3d at 1086.

18 As established by the sworn Declaration of Sybil E. Veenman, and set forth above, BGC
 19 engages in none of the hallmark activities that would permit this Court to exercise general
 20 personal jurisdiction over it. BGC is not incorporated under Nevada law, is not licensed to do
 21 business in the State of Nevada, and does not regularly carry out, solicit, or transact business in
 22 the state. (Statement of Facts (“Facts”), supra, ¶¶ 1-3, 6.) BGC does not buy, sell, or trade any
 23 goods, services, or commodities in Nevada. (Facts ¶¶ 9, 12.) BGC does not have an office or
 24 employees in Nevada, nor does it have a mailing address or telephone listing in the state. (Facts
 25 ¶ 8.) BGC does not own any real or tangible personal property in this forum, has never paid
 26 property or income taxes in Nevada, and does not hold any bank accounts in the state. (Facts
 27 ¶¶ 7, 10.) In short, BGC has done nothing to “approximate physical presence” in Nevada, a *sine*

1 *qua non* for this Court to exercise general personal jurisdiction over the company. Fze, 602 F.
 2 Supp. 2d at 1192 (quoting Glencore Grain Rotterdam Bv, 284 F.3d at 1124).

3 **B. Goldstrike's Activities in Nevada Are Irrelevant to the Personal Jurisdiction**
 4 **Inquiry for BGC.**

5 It is axiomatic that “[p]ersonal jurisdiction over each defendant must be analyzed
 6 separately.” Harris Rutsky & Co. Ins. Servs., 328 F.3d at 1130. As such, “[i]t is well established
 7 that, as a general rule, where a parent and a subsidiary are separate and distinct corporate entities,
 8 the presence of one . . . in a forum state may not be attributed to the other” Holland Am.
 9 Line, Inc. v. Wärtsilä N. Am., Inc., 485 F.3d 450, 459 (9th Cir. 2007) (citing Doe, 248 F.3d at
 10 925); accord Miller, 2008 WL 2761018, at *3.

11 Only two exceptions exist to this general rule, and neither exception applies to BGC. The
 12 first occurs when a subsidiary is merely the “alter ego” of the parent company. Doe, 248 F.3d at
 13 926. To satisfy this exception, the Bullion Monarch must show “(1) that there is such unity of
 14 interest and ownership that the separate personalities of the two entities no longer exist and (2)
 15 that failure to disregard their separate entities would result in fraud or injustice.” Id. (alteration
 16 marks by court removed).

17 The second exception, often referred to as the “agency” exception, exists when the
 18 “subsidiary functions as the parent corporation’s representative in that it performs services that
 19 are sufficiently important to the foreign corporation that if it did not have a representative to
 20 perform them, the corporation’s own officials would undertake to perform substantially similar
 21 services.” Id. at 928.

22 1. **Goldstrike Is Sufficiently Separate From and Independent of BGC Such**
 23 **That It Cannot Be Deemed the Mere Alter Ego of BGC.**

24 Bullion Monarch does not, and cannot, allege any facts sufficient to establish that
 25 Goldstrike is the mere “alter ego” of BGC. To establish that a subsidiary company is the alter ego
 26 of its parent for purposes of imputing the subsidiary’s contacts with a forum to the parent, a
 27 plaintiff must establish that the parent “dictates every facet of the subsidiary’s business” and “is
 28

1 involved in the day-to-day operations” of the subsidiary. Id. at 926-27 (alteration marks by court
2 omitted); see also Truck Ins. Exch. v. Palmer J. Swanson, Inc., 189 P.3d 656, 660 (Nev. 2008)
3 (“The corporate cloak is not lightly thrown aside and . . . the alter ego doctrine is an exception to
4 the general rule recognizing corporate independence.” (internal quotation marks omitted)).

5 That a parent is the sole shareholder of a subsidiary, or has some high-level involvement
6 in setting the subsidiary’s business objectives, does not reveal a unity of interest and ownership or
7 improper domination by the parent. Proper involvement by a parent company in its subsidiary’s
8 affairs specifically includes ““monitoring the subsidiary’s performance, supervision of the
9 subsidiary’s finance and capital budget decisions, and articulation of general policies and
10 procedures,”” among other things. Doe, 248 F.3d at 926 (quoting United States v. Bestfoods, 524
11 U.S. 51, 72 (1998)).

12 BGC is the corporate great-grandparent of Goldstrike; there are two intermediate
13 corporate parents between BGC and Goldstrike—ABX and Exploration. (Facts ¶¶ 13-16.) None
14 of BGC’s directors is a member of Goldstrike’s board of directors. (Facts ¶ 21.) Although BGC
15 exercises its prerogative as the ultimate corporate parent to monitor the overall business strategy
16 of its affiliated companies, including the subsidiaries in the Goldstrike branch of the family tree,
17 Goldstrike’s officers and managers perform the day-to-day operational management of the
18 company. (Facts ¶ 18); Doe, 248 F.3d at 927; Truck Ins. Exch., 189 P.3d at 661.

19 Similarly, BGC “has maintained the corporate formalities by properly documenting” any
20 financial transactions between itself and Goldstrike. Doe, 248 F.3d at 928; (Facts ¶ 22). BGC
21 and Goldstrike have likewise observed all other applicable corporate formalities by, among other
22 things, maintaining separate corporate by-laws, minutes, records, and bank accounts. (Facts
23 ¶¶ 17, 19-20); Truck Ins. Exch., 189 P.3d at 661; LFC Mktg. Group, Inc. v. Loomis, 8 P.3d 841,
24 847 (Nev. 2000) (“[F]ailure to observe corporate formalities” is a factor in the alter-ego
25 analysis.).

26 As for the second requirement, Bullion Monarch cannot establish that “failure to disregard
27 [BGC’s and Goldstrike’s] separate entities would result in fraud or injustice.” Doe, 248 F.3d at
28 926. Courts often find such fraud and injustice when the subsidiary is so undercapitalized that a

1 judgment creditor would be unable to recover against the subsidiary. LFC Mktg. Group, Inc., 8
 2 P.3d at 847. Here, however, Goldstrike owns and operates the highly productive Goldstrike Mine
 3 near Carlin, Nevada, and has sufficient assets to satisfy any judgment that the Court may enter
 4 against it in this case. (Facts ¶ 23.) As a result, there is no basis for this Court to disregard the
 5 corporate separateness of BGC and Goldstrike.

6 In sum, while BGC is somewhat “involved in the activities of” Goldstrike, its involvement
 7 is limited to and entirely “consistent with [its] investor status.” Doe, 248 F.3d at 926 (internal
 8 quotation marks omitted). Such parental involvement is appropriate under the law, does not
 9 render Goldstrike the mere “alter ego” of BGC, and does not subject BGC to personal jurisdiction
 10 in Nevada.

11 2. Goldstrike is Not BGC’s Agent for Purposes of the Personal Jurisdiction
 12 Analysis.

13 In Doe, the United States Court of Appeals for the Ninth Circuit distinguished the
 14 situation in which a subsidiary acts as the agent of the parent corporation, thereby subjecting the
 15 parent to the forum-related contacts of its subsidiary, from the situation in which the parent is
 16 merely a holding company. 248 F.3d at 928-29. “[I]n the case of a holding company[,] the
 17 parent could simply hold another type of subsidiary, in which case imputing the subsidiaries’
 18 jurisdictional contacts to the parent would be improper.” Id. at 929. Under Doe, the key
 19 distinction is whether the ““business of the parent is the business of investment,”” or whether,
 20 ““on the other hand, . . . there is no basis for distinguishing between the business of the parent and
 21 the business of the subsidiaries.”” Id. (quoting Bellomo v. Pa. Life Co., 488 F. Supp. 744, 746
 22 (S.D.N.Y. 1980)).

23 As established by the Declaration of Sybil E. Veenman, and set forth above, BGC is the
 24 paradigmatic example of a holding company, whose sole business is the management of its
 25 investments and interests in a variety of mining operations and businesses in other industries.
 26 (Facts ¶¶ 3-5.) BGC does not itself engage in mining or ore processing activities, it does not
 27 operate mining or processing facilities, and it does not participate in activities ancillary to mining
 28 or processing activities. (Facts ¶ 11.) As a practical matter, BGC could not engage in such

1 activities because it owns no equipment or facilities to do so. (*Id.*) Even if it desired to do so,
2 BGC could not “perform the activities of its U.S. operational subsidiaries were they unavailable
3 to act as its ‘representative.’” *Doe*, 248 F.3d at 929.

4 A recent decision of this Court confirms that it would be improper to attribute
5 Goldstrike’s Nevada contacts to BGC. In *Natural Gas Litigation*, decided earlier this year, this
6 Court held that a parent company, which held a large portfolio of companies in the energy
7 industry, was not subject to personal jurisdiction under an agency theory because of its
8 subsidiaries’ contacts with the forum. 605 F. Supp. 2d 1118, 1136-38 (D. Nev. 2009).² Like
9 BGC here, the parent company in *Natural Gas Litigation* established, by way of affidavit, that it
10 merely held “the shares of the different subsidiaries that are actually engaged in the different
11 business operations of” of the parent company, including the subsidiaries whose acts in the forum
12 were alleged to have caused the plaintiff’s harm. *Id.* at 1136.

13 In the course of discussing the agency theory of personal jurisdiction, this Court cited
14 approvingly *Sonora Diamond Corp. v. Superior Court*, 99 Cal. Rptr. 2d 824, 840-41 (Cal. Ct.
15 App. 2000), a case strikingly similar to this one. As this Court noted, *Sonora Diamond Corp.*
16 established the principle that “where the parent company owned a subsidiary mining company’s
17 stock *but did not itself engage in the business of gold mining*, imputing the subsidiary’s forum
18 contacts to the parent was not appropriate.” *Natural Gas. Litig.*, 605 F. Supp. 2d at 1135
19 (emphasis added).

20 Because BGC does not, and indeed cannot, itself engage in the mining business, but has
21 instead invested in the stock of a subsidiary that has the capacity to engage in such operations, it
22 would be improper for this Court to attribute Goldstrike’s contacts with the Nevada forum to
23 BGC. As such, there is no basis for the exercise of general personal jurisdiction over BGC.

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26
27 ² Although the *Natural Gas Litigation* case was transferred to this Court by the Judicial Panel on Multidistrict
28 Litigation, this Court, consistent with well-established legal principles, “appl[ie]d law from the United States Court
of Appeals for the Ninth Circuit in deciding whether jurisdiction [wa]s appropriate under the Due Process Clause.”
605 F. Supp. 2d at 1131.
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1 **IV. THIS COURT LACKS SPECIFIC PERSONAL JURISDICTION OVER BGC**

2 **A. BGC Has Never Purposefully Availed Itself of the Privilege of Conducting**
 3 **Activities in Nevada.**

4 In the Ninth Circuit, “[a] purposeful availment analysis [rather than a purposeful direction
 5 analysis] is most often used in suits sounding in contract.” Schwarzenegger v. Fred Martin Motor
 6 Co., 374 F.3d 797, 802 (9th Cir. 2004). The “evaluation of the jurisdictional significance of a
 7 defendant’s contract or other business in the forum is not rigid and formalistic, but rather practical
 8 and pragmatic.” Boschetto v. Hansing, 539 F.3d 1011, 1016 (9th Cir. 2008) (citing Burger King
 9 Corp. v. Rudzewicz, 471 U.S. 462, 478 (1985)).

10 The second prong of the specific jurisdiction analysis requires a nexus between the claims
 11 asserted and the defendant’s forum-related activities, and thus the only activities of BGC relevant
 12 to this inquiry are those related to Bullion Monarch’s claims in this particular case. See Terracom
 13 v. Valley Nat’l Bank, 49 F.3d 555, 561 (9th Cir. 1995) (“The second prong of the specific
 14 jurisdiction test is met if ‘but for’ the contacts between the defendant and the forum state, the
 15 cause of action would not have arisen.”). “In a breach of contract case, it is only the ‘dealings
 16 *between the parties in regard to the disputed contract*’ that are relevant to the mini[m]um
 17 contacts analysis.” Hanes Cos. v. Contractor’s Source, Inc., No. 1:08CV334, 2008 WL 4533989,
 18 at *6 (M.D.N.C. Oct. 6, 2008) (quoting Vetrotex Certaineed Corp. v. Consol. Fiber Glass Prods.
 19 Co., 75 F.3d 147, 153 (3d Cir. 1996) (emphasis in original)).

20 Bullion Monarch’s claims in this litigation arise entirely out of a 1979 agreement, and its
 21 theory about how BGC is liable under that contract is tenuous, vague, and desultory. (See Am.
 22 Compl. ¶¶ 4-9B.) Bullion Monarch’s Amended Complaint is devoid of allegations establishing
 23 any affirmative, purposeful acts on the part of BGC in connection with that 1979 agreement. At
 24 best, Bullion Monarch appears to aver that BGC somehow became liable under the 1979
 25 agreement in 1995, more than fifteen years after its execution, when one of its subsidiaries (HD
 26 Acquisition) merged with a joint venture partner (High Desert Mineral Resources of Nevada,
 27
 28

1 Inc.³) of an alleged successor (Newmont Mining Company) to one of the original parties
 2 (Universal Gas) of the 1979 agreement. (Am. Compl. ¶¶ 9A-9B.) While Bullion Monarch's
 3 liability theory is tenuous at best, its allegations are insufficient, as a matter of law, to
 4 demonstrate that BGC has—by virtue of its purported position as the mere parent to the successor
 5 of a joint venture partner with a successor of an original party to the 1979 contract—purposefully
 6 availed itself of the privilege of doing business in the Nevada forum. Tellingly, Bullion Monarch
 7 does not assert a single fact actually linking BGC to the operation of the joint venture or the 1979
 8 agreement.

9 Apart from BGC's purported status as the ultimate parent company of a subsidiary, that,
 10 through a long, tortured chain of events, is alleged to have certain contractual obligations to
 11 Bullion Monarch, no other connection between BGC, the Nevada forum, and Bullion Monarch's
 12 claims is alleged in the Amended Complaint. Exercising jurisdiction over BGC upon such a
 13 flimsy connection to the Nevada forum would run directly afoul of the United States Supreme
 14 Court's admonition in Burger King Corp. v. Rudzewicz that "a contract alone does not
 15 automatically establish minimum contacts." Boschetto, 539 F.3d at 1017 (citing Burger King
 16 Corp., 471 U.S. at 478).

17 **B. Bullion Monarch's Claims Do Not Arise From or Relate to BGC's Activities**
 18 **in the Nevada Forum.**

19 In order to establish specific jurisdiction over BGC, Bullion Monarch must not only
 20 demonstrate purposeful availment, but also that its claims "arise out of [BGC's] forum-related
 21 activities." Terracom, 49 F.3d at 560. The Ninth Circuit employs a "but-for" test to assess
 22 whether there is a sufficient nexus between the plaintiff's claims and the defendant's in-forum
 23 activities. That test is satisfied only "if 'but for' the contacts between the defendant and the
 24 forum state, the cause of action would not have arisen." Id. at 561.

25 Here, Bullion Monarch affirmatively alleges that its claims arise directly from the actions
 26 of Newmont: "Newmont refused to provide [a] detailed accounting for the royalty," Newmont

27 ³ Following the merger, the surviving corporation, High Desert Mineral Resources of Nevada, Inc., was immediately
 28 renamed "Barrick HD Inc."
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1 breached the 1979 agreement by making “demands” on Bullion Monarch, Newmont “had
2 concealed [certain mining] activities from its ‘reports’ of its mining activities” to Bullion
3 Monarch, and Newmont “refused to provide any information regarding its activities in the Area of
4 Interest and refused to pay any royalties” that Bullion Monarch claims it is owed. (Am. Compl.
5 ¶¶ 8-9.) Indeed, precisely the same claims asserted in the Amended Complaint against BGC and
6 Goldstrike have been pending against Newmont, by itself, since April 2008.

7 Bullion Monarch also seems to suggest that, insofar as Goldstrike is the ultimate corporate
8 successor of High Desert Mineral Resources of Nevada, Goldstrike somehow obligated itself to
9 the terms of the 1979 agreement and breached the agreement by failing to pay required royalties.
10 Even if such allegations were true, BGC cannot be held to answer for the liabilities of its
11 independent subsidiary. The Amended Complaint lacks a single allegation concerning any act or
12 omission on the part of BGC that, separate and apart from the allegations against Newmont and
13 Goldstrike, purportedly gives rise to Bullion Monarch’s claims. Thus, Bullion Monarch cannot
14 establish any “but for” link between the conduct of BGC and its claims in this action.

15 In Terracom, the Ninth Circuit recognized that where the acts of parties other than the
16 defendant were sufficient to cause the plaintiff’s harm, the defendant’s actions were not a but-for
17 cause of the claims for purposes of the specific jurisdiction analysis. 49 F.3d at 560-61. In
18 Terracom, the plaintiff alleged that a bank, which had certified the financial ability of a surety on
19 a government contract, was subject to personal jurisdiction in the forum in which the contract was
20 supposed to have been performed. Id. at 556-57. Because other parties shared the responsibility
21 for verifying the financial status of the surety, and because the bank’s certification was only one
22 of several considerations in that process, the court found that even without the bank’s allegedly
23 improper certification, the plaintiff’s claims would still have arisen. Id. at 561.

24 As in Terracom, Bullion Monarch’s own allegations establish that it is the alleged failure
25 of Newmont and Goldstrike to pay royalties or provide accountings that led to the alleged
26 breaches of the 1979 agreement. Bullion Monarch alleges no acts by BGC in the Nevada forum
27 that contributed to such breach. As such, Bullion Monarch cannot establish that its claims would
28

1 not have arisen but for the involvement of BGC and cannot establish any basis for this Court to
2 exercise specific personal jurisdiction over BGC.

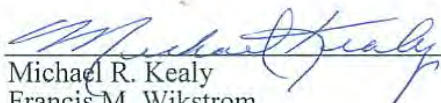
3 In sum, because BGC has not purposefully availed itself of the privilege of doing business
4 in the Nevada forum, and the claims in this case have nothing to do with BGC's activities in
5 Nevada or elsewhere, this Court may not exercise specific personal jurisdiction over BGC.

6 **CONCLUSION**

7 For the foregoing reasons, the Court should grant BGC's Rule 12(b)(2) motion and enter
8 an order dismissing all of Bullion Monarch's claims against BGC for lack of personal
9 jurisdiction.

10 Dated: July 16, 2009

PARSONS BEHLE & LATIMER


11
12 By: 
13 Michael R. Kealy
14 Francis M. Wikstrom
15 Michael P. Petrogeorge
16 Brandon J. Mark
17 *Attorneys for Defendants Barrick Gold*
18 *Corporation and Barrick Goldstrike Mines*
19 *Inc.*
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Parsons Behle & Latimer, and that on the 16th day of July, 2009, a true and correct copy of the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RULE 12 (b)(2) MOTION TO DISMISS ALL CLAIMS AGAINST BARRICK GOLD CORPORATION FOR LACK OF PERSONAL JURISDICTION was served via the Court's CM/ECF system, as follows:

Clayton P. Brust, Esq.
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, Nevada 89503

Matthew B. Hippler, Esq.
Shane M. Biornstad, Esq.
Holland & Hart, LLP
5441 Kietzke Lane, Suite 200
Reno, Nevada 89511



Employee of Parsons Behle & Latimer

EXHIBIT E

DECLARATION OF DANA STRINGER

I, Dana Stringer, hereby declare as follows:

1. I am Vice-President, Corporate Secretary and Associate General Counsel of Barrick Gold Corporation ("Barrick Gold") and have knowledge of the facts of this affidavit and will competently testify to same if called upon to do so.

2. In November 2018, Barrick Gold continued as a corporation organized under the laws of the Province of British Columbia, Canada. Previously, Barrick Gold was a corporation organized under the laws of the Province of Ontario, Canada.

3. Barrick Gold's headquarters is located at Brookfield Place, TD Canada Trust Tower, 161 Bay Street, Suite 3700, Toronto, Ontario, M5J 2S1. Barrick Gold's registered office is 925 West Georgia Street, Suite 1600, Vancouver, British Columbia, V6C 3L2.

4. In December 2018, Barrick Gold's executive officers were John Thornton, the Executive Chairman of the Board of Directors, who resided in Florida; Kevin Thomson, Senior Executive Vice President, Strategic Matters who resided in Toronto, Canada; Catherine Raw, Executive Vice President and Chief Financial Officer, who resided in Toronto, Canada; Darian Rich, Executive Vice President, Talent Management, who resided in Toronto, Canada; Robert Krcmarov, Executive Vice President, Exploration and Growth, who resided in Toronto, Canada; Mark Hill, Chief Investment Officer, who resided in Toronto, Canada, Kathy Sipos, Chief of Staff, who resided in Toronto, Canada; and Greg Walker, Senior Vice President, Operational and Technical Excellence, who resided in Toronto, Canada.

5. In December 2018, none of Barrick Gold's executive officers resided in Nevada.

6. In December 2018, Barrick Gold had thirteen members on its Board of Directors. Three of Barrick Gold's directors lived in Toronto, Canada; two lived in Nevada; five lived in other areas of the United States (Florida, New York, California, Colorado, and Pennsylvania), and three resided outside of the United States and Canada (Argentina, Chile and the Dominican Republic).

7. In 2018, the Board of Directors held all of its meetings in Toronto, Canada.

8. Barrick Gold's corporate records are maintained in Toronto, Canada.

1 9. Barrick Gold exists as a parent company, managing its investments and interests in
2 various wholly and partially owned subsidiary companies.

3 10. Although most of Barrick Gold's subsidiary companies are involved in the gold
4 mining industry, Barrick Gold holds a diverse portfolio of interests and investments.

5 11. Barrick Gold's subsidiary companies operate in numerous countries throughout the
6 world and operate and exist under the laws of those jurisdictions.

7 12. Barrick Gold is not registered to do business as a foreign corporation in Nevada
8 under NRS 80.060 because it does not own any property in Nevada and does not conduct any
9 business in Nevada.

10 13. Barrick Gold has never registered to do business as a foreign corporation in Nevada,
11 and therefore has never appointed a registered agent under Nevada law, because it has never owned
12 any property in Nevada and has never conducted business in the state.

13 14. Prior to December 2018, Barrick Gold had never directly participated in a joint
14 venture or partnership owning properties in Nevada.

15 15. Barrick Gold has never designed, manufactured, advertised, delivered, or sold any
16 goods, services, or products in Nevada.

17 16. Barrick Gold does not have any employees in Nevada.

18 17. Barrick Gold does not have an office or telephone listing in Nevada.

19 18. Barrick Gold does not have any bank accounts in Nevada.

20 19. Barrick Gold does not pay any taxes in Nevada or to any Nevada taxing authority.

21 20. Barrick Gold does not have any license or distribution agreements involving
22 Nevada.

23 21. As of December 2018, Barrick Gold had no presence in Nevada, except through a
24 lengthy chain of separately incorporated U.S. subsidiaries. Barrick Gold was the ultimate parent
25 company of several companies that operate in Nevada. For example, in December 2018 the
26 Goldstrike mine, which is located near Elko, Nevada, was owned by Defendant Barrick Goldstrike
27 Mines, Inc. ("Goldstrike"), a Colorado corporation. Goldstrike is a subsidiary of Defendant Barrick
28 Gold Exploration, Inc. ("Exploration"), a Delaware corporation, which is, in turn, a subsidiary of

1 Defendant ABX Financeco, Inc. ("ABX"), a Delaware corporation, which is a subsidiary of Barrick
2 Gold.

3 22. Barrick Gold does not itself engage in mining or processing activities, operate
4 mining or processing facilities within Nevada or the United States. Barrick Gold does not itself own
5 any equipment or facilities to conduct mining or processing activities in Nevada or the United
6 States.

7 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
8 is true and correct.

9 DATED this 11th day of October 2019.

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

**PA 0129-0226
FILED UNDER SEAL**