

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRICK GOLD CORPORATION,

Petitioner,

vs.

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

Respondent,

and

BULLION MONARCH
MINING, INC.,

Real Party in Interest.

Case No.

Electronically Filed
Aug 25 2021 08:41 a.m.

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

VOLUME VI OF VIII

DATED this 24th day of August, 2021.

PISANELLI BICE PLLC

By: /s/ Jordan T. Smith

James J. Pisanelli, Esq., #4027

Todd L. Bice, Esq., #4534

Debra L. Spinelli, Esq., #9695

Jordan T. Smith, Esq., #12097

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Attorneys for Petitioner Barrick Gold Corporation

CHRONOLOGICAL INDEX

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1	Reply in Support of Barrick Gold	09/08/2020	VI	PA 1149-1173
2	Corporation's Motion to Dismiss Plaintiff's			
3	Second Amended Complaint			
4	Reply in Support of Barrick Gold	03/22/2021	VII	PA 1545-1551
5	Corporation's Motion to Dismiss Plaintiff's			
6	Third Amended Complaint			
7	Second Amended Complaint	07/14/2020	II	PA 0344-0390
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9	Third Amended Complaint	02/08/2021	VI	PA 1296-1346
10	FILED UNDER SEAL			
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.
ROBISON, SHARP, SULLIVAN & BRUST, P.C.
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Reno, NV 89503

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

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

/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC

EXHIBIT 7

EXHIBIT 7

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 BULLION MONARCH MINING, INC.,)

4 Plaintiff,)

5 v.)

6 BARRICK GOLDSTRIKE MINES, INC.,)

7 Defendant,)

CERTIFIED COPY

) Case No.

) 03:09-CV-612-MMD-WGC

8
9 DEPOSITION OF

10 RICH HADDOCK

11 MARCH 21, 2018

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14
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16
17
18
19
20 ATKINSON-BAKER, INC.
21 COURT REPORTERS
22 (800) 288-3376
www.depos.com

23 REPORTED BY: DEBY COUVILLON GREEN, CA CSR NO. 2791
TX CSR NO. 8929
24 UTAH CSR NO. 10611481-7801

25 FILE NO.: AC02625

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,

Plaintiff,

V.

BARRICK GOLDSTRIKE MINES, INC.,

Defendant,

Oral deposition of RICH HADDOCK, taken on

behalf of the Plaintiff Bullion Monarch Mining, Inc.,

and duly sworn, was taken in the above-styled case on

March 21, 2018 from 2:56 P.M. to 3:40 P.M. before Deby

Couvillon Green, CSR in and for the State of Texas and in

and for the State of California, and in and for the State

of Utah, Registered Professional Reporter, reported by

machine shorthand, at Parsons Behle & Latimer,

201 South Main Street, Suite 1800, Salt Lake City,

Utah, 84111 pursuant to the Federal Rules of Civil

Procedure and the provisions stated in the record

or attached hereto.

1 In 2009, did you have any officer positions
2 with Goldstrike?

3 A. I don't believe so.

4 Q. Did you -- were you a director of Goldstrike?

5 A. I was.

6 Q. Did you have an officer position in Barrick Gold
7 North America?

8 A. I'd have to go back and look. I don't recall.

9 Q. Do you know if you were an officer of Barrick
10 Gold North America?

11 A. I don't.

12 (Whereupon Exhibit 2 was marked
13 for identification.)

14 Q. (BY MR. BRUST:) Here's Exhibit Number 2.
15 Exhibit 2.

16 So Exhibit Number 2 is a spreadsheet that was
17 provided by Goldstrike as part of the jurisdictional
18 discovery in this case.

19 And does that document look familiar to you?

20 A. The document, no.

21 Q. From this document, I cannot tell whether this
22 is a document that would apply to the year 2009. Is
23 there anything on here that you can look at -- and
24 I'll -- I don't know, maybe Counsel can help with that,
25 because the discovery was for documents from 2009 and

1 information from 2009.

2 I'm just trying to establish whether this
3 information in this document is information from the year
4 2009.

5 MR. PETROGEORGE: And I need to verify, but
6 my understanding is that this reflects the officers and
7 directors of these various companies in 2009.

8 MR. BRUST: Um-hum.

9 MR. PETROGEORGE: I can't say whether they
10 were appointed, you know, at some point prior to 2009 but
11 remained in place in 2009. But that's my understanding
12 of the document.

13 THE WITNESS: Yeah. And my -- my -- my
14 reaction is that I don't believe this reflects 2009.

15 MR. PETROGEORGE: It does not?

16 THE WITNESS: No, I don't think so.

17 MR. PETROGEORGE: Okay.

18 Q. (BY MR. BRUST:) Why don't you believe it
19 reflects 2009?

20 A. Because it does not show me as a director of
21 Barrick Goldstrike Mines, Inc., and -- and, going back to
22 our database, our corporate database, I -- I know I was a
23 director in 2009.

24 Q. Okay. So Barrick Goldstrike is listed on Page 5
25 of this exhibit. Is that where you're looking?

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1 transcript of my shorthand notes so taken.

2 I further certify I am not a relative or
3 employee of any attorney of the parties, nor financially
4 interested in the action.

5 I declare under penalty of perjury under the
6 laws of Texas that the foregoing is true and correct.

7 Dated this 28th day of March, 2018.

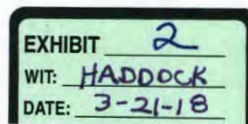
8 *Deby Couvillon Sr.*
9



10 DEBY COUVILLON GREEN, Texas CSR No. 8929
11 Expiration Date: 12-31-2019
12 California CSR No. 2791
13 Expiration Date: 8-31-2018
14 Utah CSR No. 10611481-7801
15 Expiration Date: 5-31-2020
16 Atkinson-Baker Court Reporters, Inc.
17 Firm Registration No. 32
18 Expiration Date: 12-31-2019
19 500 North Brand Boulevard
20 Glendale, California 91203
21 (818) 551-7300
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23
24

25 FILE NO.: AC02625

Entity/Address	Officers	Directors	Projects/Properties	State of Inc.	Authorized
ABX Financeco Inc. P.O. Box 29 25 Miles North of Carlin, Nevada Elko, Nevada 89822	Gregory A. Lang, President Michael Feehan, Vice President Sybil E. Veenman, Secretary Ammar Al-Joundi, Treasurer/V.P. Andre Falzon, Controller/V.P. Blake Measom, C.F.O. Paul Judd, Tax Director	Gregory A. Lang Blake Measom Jamie C. Sokalsky	Barrick and Homestake entities in the United States and Canada	Delaware	
ABX Global Management Inc. BCE Place, TD Canada Trust Tower 161 Bay Street, #3700 P.O. Box 212 Toronto, Ontario M5J 2S1 Canada	Gregory A. Lang, President Michael Feehan, V.P. Sybil E. Veenman, Secretary Ammar Al-Joundi, Treasurer/V.P. Andre Falzon, Controller/V.P. Blake Measom, C.F.O. Paul Judd, Tax Director	Gregory A. Lang Blake Measom Jamie C. Sokalsky	Global Human Resources Support for North American Ex-Pats	Delaware	
Alaska Coal Company 4720 Business Park Blvd., Suite G 25 Anchorage, AK 99503	Gregory A. Lang, C.E.O. /President Michael Feehan, V.P. Sybil E. Veenman, Secretary Ammar Al-Joundi, V.P./Treasurer Blake Measom, C.F.O. Paul Judd, Tax Director Gregg P. Barnard, Assistant Secretary	Gregory A. Lang Blake Measom Jamie C. Sokalsky		Alaska	



Entity/Address	Officers	Directors	Projects/Properties	State of Inc.	Authorized
Alaska Coal Trading Company 4720 Business Park Blvd., Suite G 25 Anchorage, AK 99503	Gregory A. Lang, President Stan Foo, Vice President Sybil E. Veenman, Secretary Ammar Al-Joundi, Treasurer/V.P. Andre Falzon, Controller/V.P. Blake Measom, C.F.O. Paul Judd, Tax Director Gregg Barnard Ass't Secretary	Gregory A. Lang Blake Measom Jamie C. Sokalsky		Alaska	
Bargold Corporation 136 East South Temple Street Suite 1300 Salt Lake City, UT 84111	Gregory A. Lang, President Michael Feehan, Vice President Sybil E. Veenman, Secretary Ammar Al-Joundi, Treasurer/V.P. Andre Falzon, Controller/V.P. Blake Measom, C.F.O. Paul Judd, Tax Director	Peter J. Kinver Gregory A. Lang Blake Measom	Round Mountain Gold Corporation #1 Smokey Valley Road Round Mountain, Nevada 89045	Delaware	
Barrick Bullfrog Inc. 136 East South Temple Street Suite 1300 Salt Lake City, UT 84111	Gregory A. Lang, President Sybil E. Veenman, Secretary Ammar Al-Joundi, Treasurer/V.P. Andre Falzon, Controller/V.P. Blake Measom, C.F.O. Paul Judd, Tax Director	Gregory A. Lang Blake Measom Rich Haddock	Bullfrog Highway 374, 4 Miles from Beatty Beatty, Nevada 89003	Delaware	Nevada

Entity/Address	Officers	Directors	Projects/Properties	State of Inc.	Authorized
Barrick Cortez, Inc. 136 East South Temple Suite 1300 Salt Lake City, Utah 84111	Gregory A. Lang, President Sybil E. Veenman, Secretary Ammar Al-Joundi, Treasurer/V.P. Andre Falzon, Controller/V.P. Blake Measom, C.F.O. Paul Judd, Tax Director Gregg Barnard, Ass't Secretary	Gregory A. Lang Blake Measom Jamie C. Sokalsky	Cortez Joint Venture State Route 306 16 Miles South of Crescent Valley P.O. Box 1300 Crescent Valley, NV 89821	Delaware	Nevada
Barrick Gold, Inc. BCE Place, TD Canada Trust Tower 161 Bay Street, #3700 P.O. Box 212 Toronto, Ontario M5J 2S1 Canada	Gregory A. Lang, President Sybil E. Veenman, Secretary Ammar Al-Joundi, Treasurer/V.P. Andre Falzon, Controller/V.P. Blake Measom, C.F.O. John Giakoumakis, Tax Director Paul Judd, Assistant Tax Director	Peter J. Kinver Gregory A. Lang Jamie C. Sokalsky	Eskay Creek P.O. Box 3908 Smithers, British Columbia V0J 2N0 Hemlo Williams Operating Corporation P.O. Bag 500 Marathon, Ontario P0T 2E0 Teck Corona Operating Corporation P.O. Bag 500 Marathon, Ontario P0T 2E0	Ontario	

Entity/Address	Officers	Directors	Projects/Properties	State of Inc.	Authorized
Barrick Gold Exploration, Inc. 293 Spruce Road Elko, Nevada 89801	Gregory A. Lang, President Ed Cope, V.P., Exploration Alex Davidson, V.P. Sybil E. Veenman, Secretary Ammar Al-Joundi, Treasurer/V.P. Andre Falzon, Controller/V.P. Blake Measom, C.F.O. Paul Judd, Tax Director	Gregory A. Lang Blake Measom Jamie C. Sokalsky	North American Exploration	Delaware	Alaska Nevada
Barrick Gold of North America, Inc. 136 East South Temple Street Suite 1300 Salt Lake City, UT 84111	Gregory A. Lang, President Sybil E. Veenman, Secretary Ammar Al-Joundi, Treasurer/V.P. Andre Falzon, Controller/V.P. Blake Measom, C.F.O. Paul Judd, Tax Director	Gregory A. Lang Blake Measom Jamie C. Sokalsky	North American Operations	Delaware	
Barrick Gold U.S. Inc. 136 East South Temple Suite 1300 Salt Lake City, Utah 84111	Gregory A. Lang, President Sybil E. Veenman, Secretary Ammar Al-Joundi, Treasurer/V.P. Andre Falzon, Controller/V.P. Blake Measom, C.F.O. Paul Judd, Tax Director Michael Brown, VP Government Relations Gregg Barnard, Ass't Secretary	Gregory A. Lang Blake Measom Jamie C. Sokalsky	Bald Mountain Mine SR 892, Ely, Nevada 89301 McDermitt Joint Venture Donlin Creek Project Beluga Coal Company Placer Sales Inc. Barrick Cortez Inc. Golden Sunlight Mines Inc.	California	Alaska Arizona Colorado Idaho Montana Nevada New Mexico Utah

Entity/Address	Officers	Directors	Projects/Properties	State of Inc.	Authorized
Barrick Goldstrike Mines Inc. P.O. Box 29 Elko, Nevada 89803	Gregory A. Lang, President Patrick J. Garver, V.P. Sybil E. Veenman, Secretary Ammar Al-Joundi, Treasurer/ V.P. Michael Feehan V.P. Michael Brown V.P. Andre Falzon, Controller/V.P. Blake Measom, C.F.O. Paul Judd, Tax Director	Peter J. Kinver Gregory A. Lang Blake Measom Jamie Sokalsky Stephen J. Hull	Goldstrike Mine P.O. Box 29 Elko, Nevada 89803 Western 102 Plant P.O. Box 661 Virginia City, NV 89440	Colorado	Nevada
Barrick Holding Co. BCE Place, TD Canada Trust Tower 161 Bay Street, #3700 P.O. Box 212 Toronto, Ontario M5J 2S1 Canada	Gregory A. Lang, President Sybil E. Veenman, Secretary Ammar Al-Joundi, Treasurer/V.P. Andre Falzon, Controller/V.P. Blake Measom, C.F.O. Paul Judd, Tax Director	Gregory A. Lang Blake Measom Jamie C. Sokalsky	Homestake Mining Company Geothermal Kinetics Inc. United Geothermal Geysers Inc.	California	
Barrick (HMC) Mining Company 136 East South Temple Suite 1300 Salt Lake City, Utah 84111	Jamie C. Sokalsky, Chairman and President Andre Falzon, V.P./Controller Patrick J. Garver, V.P. Gregory A. Lang, V.P. Blake Measom, V.P. Sybil Veenman, Secretary Ammar Al-Joundi, V.P./Treasurer Paul Judd, Tax Director	Gregory A. Lang Blake Measom Jamie C. Sokalsky	Homestake Mining Company of California	Delaware	

EXHIBIT 8

EXHIBIT 8

1 PARSONS BEHLE & LATIMER

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6 Michael P. Petrogeorge (Utah Bar No. 8870; admitted *pro hac vice*)
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10 *Attorneys for Barrick Goldstrike Mines Inc.*

11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF NEVADA
14

15 BULLION MONARCH MINING, INC.,
16 Plaintiff,
17 v.
18 BARRICK GOLDSTRIKE MINES INC., *et*
19 *al.*,
20 Defendants.

Case No. 3:09-CV-00612-MMD-WGC

**BARRICK GOLDSTRIKE MINES
INC.'S RESPONSES TO BULLION
MONARCH MINING, INC.'S
JURISDICTIONAL REQUEST FOR
PRODUCTION OF DOCUMENTS**

21 Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure ("FRCP") and this
22 Court's Order granting Plaintiff Bullion Monarch Mining, Inc.'s ("Bullion") Motion for
23 Jurisdictional Discovery [ECF No. 267] (the "Jurisdictional Order"), defendant Barrick Goldstrike
24 Mines Inc. ("Goldstrike") hereby objects and responds to Bullion's Jurisdictional Requests for
25 Production of Documents served on Goldstrike on or about October 31, 2017 ("Jurisdictional
26 Document Requests").
27
28

1 or material to the limited jurisdictional question currently before the court, and Goldstrike reserves
2 the right to object to any further inquiry with respect to any subject matter at any time.

3 12. Goldstrike incorporates each of the foregoing general objections into each and every
4 response below as if specifically and fully set forth therein. A republication or restatement, in whole
5 or in part, of any one or more of the foregoing general objections in response to a specific request
6 is not intended to waive and does not waive an objection not otherwise stated.

7 **RESPONSES TO REQUESTS**

8 **JURISDICTIONAL DOCUMENT REQUEST FOR PRODUCTION NO. 1:** All corporate
9 minutes of Goldstrike from January 1, 2009, to December 31, 2009, including agendas ancillary to
10 all meetings from which those corporate minutes were derived.

11 **RESPONSE TO JURISDICTIONAL DOCUMENT REQUEST NO. 1:** Goldstrike
12 incorporates by reference each of the general objections set forth above as if fully set forth and
13 restated herein.

14 Goldstrike specifically objects to Jurisdictional Document Request No. 1 as follows:

15 1. Vague with respect to the undefined term "corporate minutes." Goldstrike construes
16 that term to refer to the minutes or resolutions of Goldstrike's Board of Directors.

17 2. Overbroad, unduly burdensome, disproportionate, and irrelevant to the question of
18 whether Goldstrike's corporate headquarters or "nerve center" under *Hertz* was located in Salt Lake
19 City in 2009 insofar as it seeks "agendas ancillary to all meetings from which those corporate
20 minutes were derived."

21 Subject to and without waiving any of the foregoing general or specific objections,
22 Goldstrike responds to Jurisdictional Document Request No. 1 as follows:

23 Goldstrike did not hold Board of Director meetings in 2009. The Board of Directors for
24 Goldstrike acted through board resolutions, which will be produced for 2009. No further or
25 additional documents will be produced in response to Jurisdictional Document Request No. 1.

26 **JURISDICTIONAL DOCUMENT REQUEST FOR PRODUCTION NO. 2:** Goldstrike's
27 Corporate business records that identify all Officers, Managers, General Managers, and Directors
28 of Goldstrike from January 1, 2009, to December 31, 2009.

1 Subject to and without waiving the foregoing general and specific objections set forth
2 above, Goldstrike responds to Jurisdictional Document Request No. 10 as follows:

3 The only unemployment claims even potentially relevant to the jurisdictional question
4 currently before this Court would be unemployment claims filed by Goldstrike's President and his
5 direct reports in 2009. To the best of Goldstrike's current knowledge and recollection, no
6 unemployment claims were filed by such employees in 2009. As such, Goldstrike will not produce
7 any documents in response to Jurisdictional Document Request No. 10.

8 Dated: November 30, 2017

PARSONS BEHLE & LATIMER

9
10 By: 

Michael R. Kealy

Francis M. Wikstrom

Michael P. Petrogeorge

Brandon J. Mark

Attorneys for Barrick Goldstrike Mines Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of November, 2017, a true and correct copy of the foregoing **BARRICK GOLDSTRIKE MINES INC.'S RESPONSES TO BULLION MONARCH MINES, INC.'S JURISDICTIONAL REQUEST FOR PRODUCTION OF DOCUMENTS**, was served on the following via electronic mail:

Daniel F. Polsenberg
Joel D. Henroid
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Las Vegas, NV 89169
dpolsenberg@llrlaw.com
jhenriod@llrlaw.com

Thomas L. Belaustegui
Clayton P. Brust
Robinson, Belaustegui, Sharp & Low
71 Washington Street
Reno, Nevada 89503
cbrust@rbslahys.com

/s/ Michael P. Petrogeorge

EXHIBIT 9

EXHIBIT 9

7/10/90-F

OPTION AGREEMENT

between

**BULLION-MONARCH JOINT VENTURE,
a Joint Venture among Westmont Gold Inc.,
The Petrol Oil & Gas Corporation,
United El Dorado Corporation,
Camsell River Investments Ltd.,
Lambert Management Ltd.,
Eltel Holdings Ltd.
and Lost Dutchman Construction, Inc.**

and

HIGH DESERT MINERAL RESOURCES, INC.,

Dated Effective April 26, 1990

BMM 3678

7/10/90-F

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to Option Agreement between
Bullion-Monarch Joint Venture and
High Desert Mineral Resources, Inc.
Dated Effective April 26, 1990

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The intent of the parties hereto is that, upon the Closing, Optionee shall own all of the right, title and interest in and to the Property previously owned by Optionor, after which Optionor shall have no right, title or interest in the Property, other than the Net Smelter Return royalty to be conveyed to it by Optionee pursuant to subsection 7.3.B(2) below.

B. Optionee's Obligations: At the Closing, Optionee shall:

(1) pay Optionor, by cashier's check or a wire transfer of funds, the sum of either: (a) \$9,750,000, if Optionee exercised the Option during Phase I; or (b) \$9,500,000 if Optionee exercised the Option during Phase II;

(2) deliver to Optionor, by means of an instrument in a form reasonably requested by Optionor, a non-participating royalty of 1% of Net Smelter Returns, as provided in Exhibit B hereto, from the Property, payable (subject to offset and reduction as provided in subsection 3.3.A(7) above) until a total of \$2,000,000 (which sum shall not be reduced by the aforementioned offset and reduction) has been paid pursuant to such royalty, at which time the royalty will terminate; and

(3) assume and become liable for the following obligations and liabilities of Optionor to the extent that the same were not required to be paid or performed by Optionor prior to the Closing:

(a) To the extent disclosed to Optionee, all obligations of Optionor under the Underlying Agreements (including the obligations to pay rentals, royalties or other payments) which accrue or relate to periods commencing after the Closing; and

(b) To the extent disclosed to Optionee on Exhibit D, all obligations under any licenses, permits, authorizations or approvals which Optionor was not required to pay, fulfill or perform prior to the Closing, including but not limited to obligations arising from reclamation obligations under the laws of the State of Nevada and the posting of bonds to ensure reclamation pursuant to such laws and regulations.

ARTICLE VIII OBLIGATIONS AFTER CLOSING

8.1 Sales and Use Taxes and Recording Fees. Optionee shall pay all applicable sales and use taxes occasioned by the sale of Property and all documentary, filing and recording fees required in connection with the filing and recording of any conveyances and

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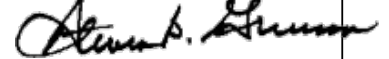
**EXHIBIT F
to Option Agreement
Dated Effective April 26, 1990
between
Bullion-Monarch Joint Venture ("Optionor") and
High Desert Mineral Resources, Inc. ("Optionee")**

**CONTRACTS AND AGREEMENTS
RELATED TO THE PROPERTY**

1. Lease and Option, dated August 13, 1969, by and between R.D. Rubright and Mary Joe Rubright and Fred Kurtz ("Lessors") and Bullion Monarch Company, as Lessee.
2. Agreement, dated May 10, 1979, between Bullion Monarch Company, Polar Resources Co., Universal Gas (Montana) Inc., Universal Explorations Ltd., Camsell River Investments, Ltd., Lambert Management Limited and Eltel Holdings Ltd.
3. Warranty Deed, dated September 28, 1988, from Earl A. Poulsen and Kenneth J. Poulsen ("Grantors") to Westmont Mining Inc. ("Grantee").

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DISTRICT COURT
CLARK COUNTY, NEVADA

BULLION MONARCH MINING, INC.,

Plaintiff,

v.

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

Defendants.

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

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

Hearing Date: September 22, 2020

Hearing Time: 10:00 a.m.

1 **I. INTRODUCTION**

2 Bullion Monarch Mining, Inc.'s ("Bullion") many references to magic and spells in its
3 opposition did not help it conjure up a valid basis for dragging Barrick Gold Corporation
4 ("Barrick Gold") into this long pending dispute. Predictably, Bullion's opposition seeks to frame
5 the 2019 transaction that led to the creation of Nevada Gold Mines LLC ("NGM") as a
6 momentous change that supposedly warrants Barrick Gold's involvement in this litigation.¹ But,
7 Barrick Gold's lack of direct presence in Nevada remains unchanged. Barrick Gold's sole relation
8 with this venue is the fact that it is the ultimate foreign parent company to United States
9 subsidiaries operating in Nevada – Barrick Goldstrike Mines, Inc. ("Goldstrike"), Barrick Gold
10 Exploration Inc. ("Exploration"), and now NGM, which is owned by Barrick Nevada
11 Holding LLC ("Barrick Holding") and Newmont USA Limited. It's time to take off the
12 magician's top hat, turn off the fog machine, and focus on the law and facts.

13 The transaction that led to the creation of NGM does not subject Barrick Gold to
14 jurisdiction in this case. Barrick Gold did not purposefully avail itself of jurisdiction in Nevada by
15 the mere fact that Barrick Gold's subsidiaries that own the subject land and mines in Nevada
16 transferred their assets into NGM as part of the transaction. The creation of NGM changes
17 nothing as it relates to Bullion's claims. The entities that actually own the subject land and operate
18 the mines (Goldstrike, Exploration, and now NGM) all remain named defendants in this action
19 and answerable to Bullion's purported claims in Nevada.

20 Nor does Bullion, who has now admitted to shopping for this forum rather than the forum
21 it "elected" a decade ago but had no luck, have any claims that "arise" from this 2019 joint
22 venture agreement, as it claims. The statement is certainly conjured up for the opposition because
23 it has no basis in fact or reality. Indeed, Bullion has insisted for nearly a decade that its claims
24 arise from a purported 1979 Agreement, *which it claims runs with the land* and thus anyone who
25 acquired the Subject Property became bound by the 1979 Agreement and the purported obligation

26

27 ¹ Bullion's attempt to reframe the supposed basis for naming Barrick Gold is belied by its
28 own prior actions. Bullion attempted to name Barrick Gold as a defendant nearly a decade ago
when this case was in federal court. Moreover, Bullion named Barrick Gold as a defendant in
December 2018, months before the 2019 transaction, when it initiated this action here.

1 to pay royalties on mineral production within the Area of Interest. Bullion's contrary insistence
2 now, nearly a decade later, to try to bring Barrick Gold into this action is beyond pale.

3 Bullion's opposition also fails to present any evidence that would warrant a finding that
4 Barrick Gold's subsidiaries are merely its agents or its alter ego. Instead, Bullion resorts to relying
5 upon the allegations – many of them false and proven so by evidence Barrick Gold submits – in
6 its recently amended complaint as support.² Bullion's failure to produce even one credible piece
7 of evidence to support its theory after decades of litigation, publically available information, prior
8 discovery, including jurisdictional, dooms its request for jurisdictional discovery. The Court gave
9 Bullion the benefit of the doubt last time when it permitted Bullion to conduct jurisdictional
10 discovery against ABX Financero Inc. ("ABX"). Bullion should not get the same benefit this time
11 around.³

12 Lastly, Bullion's attempt to avoid the consequences of its strategic choice to sue
13 Barrick Gold nearly a decade ago – only to voluntarily dismiss Barrick Gold and *then* sit upon its
14 rights – fails. Any supposed direct claims (and there is not a single one) against Barrick Gold are
15 barred. Other than Bullion fabricating new allegations of alter ego to keep Barrick Gold in this
16 action, Bullion's complaint this go around presents the same stuff. Those stale claims, if any
17 against Barrick Gold, are forever barred.

18 II. ARGUMENT

19 A. Barrick Gold is Not Directly Subject to Specific Personal Jurisdiction.

20 Bullion's Opposition concedes that Barrick Gold is not subject to general personal
21 jurisdiction in Nevada. Instead, Bullion contends that Barrick Gold is directly subject to *specific*
22

23
24 ² Bullion's first argument out of the box – that being granted leave to amended its complaint
25 is evidence that this Court thought the claims viable – ignores the very arguments it made in
26 repeatedly seeking leave to amend. Bullion's argument also ignores the entire NRCP 12(b)
27 practice and purpose, and rather presumptuously assumes that this Court predetermined viability.

28 ³ Indeed, allowing yet another round of jurisdictional discovery only signals to Bullion that
they can allege whatever they want for the sole purpose of further dragging out this decade long
dispute to keep digging for free gold. The proper parties are in this action. Bullion needs to
finally address the deficient merits of its claims, instead of being one of the few plaintiffs that
does not want to ever get to the merits of its claims.

1 personal jurisdiction in this action. (See Bullion's Opp'n 5:15-8:21, on file, Aug. 21, 2020.)
2 Bullion is wrong.

3 Unlike a general jurisdiction analysis that looks at the defendant's activities in their
4 entirety, "specific jurisdiction is proper only where the cause of action arises from the defendant's
5 contacts with the forum." *Fulbright & Jaworski v. Eighth Jud. Dist. Ct.*, 131 Nev. 30, 37,
6 342 P.3d 997, 1002 (2015) (internal quotation marks omitted). More specifically, for Nevada
7 courts to exercise specific personal jurisdiction over a nonresident defendant: (1) the defendant
8 must purposefully avail itself of the privilege of acting in the forum state or purposefully direct its
9 conduct towards the forum state,⁴ and (2) the cause of action must arise from the defendant's
10 purposeful contact or activities in connection with the forum state, such that it is reasonable to
11 exercise personal jurisdiction. *Dogra v. Liles*, 129 Nev. 932, 937, 314 P.3d 952, 955 (2013);
12 *Arbella Mut. Ins. Co. v. Eighth Jud. Dist. Ct.*, 122 Nev. 509, 513, 134 P.3d 710, 712-13 (2006).

13 Moreover, in the context of the parent-subsidary relationship, for a theory of specific
14 personal jurisdiction directed at the parent corporation, "[t]he question in this situation is not
15 whether justification exists to disregard the subsidiary's corporate existence or whether the
16 subsidiary is an agent of the parent but rather ***whether the parent for all intents and purposes has***
17 ***done an act in the forum state*** of a nature as to make reasonable the forum state's exercise of
18 jurisdiction over the parent with respect to that act and its consequences." *Sonora Diamond Corp.*
19 *v. Superior Court*, 83 Cal. App. 4th 523, 552, 99 Cal. Rptr. 2d 824, 846 (2000). In other words,
20 "the theory does not rest on a finding that the subsidiary is a sham corporation[,] or an agent or
21 representative of the parent," but rather ***the focus is on the acts of the parent corporation itself***
22 and whether those acts are sufficient for the court to exercise personal jurisdiction. *Id.*

23 ***I. Bullion fails to demonstrate purposeful availment.***

24 The thrust of Bullion's opposition appears to be that Barrick Gold is somehow subject to
25 specific jurisdiction in this action because of the Implementation Agreement and the subsequent
26 Limited Liability Agreement forming NGM. (See Bullion's Opp'n 6:15-7:4.) Contrary to Bullion's
27

28 ⁴ Where, as here, the claims sound in contract, courts apply a "purposeful availment" analysis. See *Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015).

1 predictable argument, the transaction forming NGM does *not* subject Barrick Gold to jurisdiction
2 in this case.

3 As an initial matter, the agreements forming NGM are not relevant to a specific personal
4 jurisdictional analysis against Barrick Gold. Bullion has no cause of action against Barrick Gold
5 arising from these 2019 agreements.⁵ In any event, the purposeful availment requirement is
6 designed to ensure that a defendant is not subjected to suit in a jurisdiction through random,
7 fortuitous, or attenuated contacts. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475,
8 105 S.Ct. 2174, 2183, 85 L.Ed.2d 528 (1985). Bullion presents no evidence that Barrick Gold,
9 itself, has purposefully availed itself of the privileges of Nevada; the actions pointed to in the
10 opposition are insufficient.

11 It is undisputed that Barrick Gold has never registered to do business as a foreign
12 corporation in Nevada, never owned property in Nevada, never paid taxes in Nevada, does not
13 have any employees, offices, or bank account in Nevada, and does not itself engage in mining or
14 processing activities or operate mining or processing facilities within Nevada or the United States.
15 (Barrick Gold's App. 150-153.) Contrary to Bullion's amateur magic tricks, the transaction
16 forming NGM changes none of these undisputable facts, *i.e.*, a rabbit was not pulled from the hat;
17 the hat is just empty. NGM is a subsidiary of Barrick Gold through a lengthy chain of separately
18 incorporated United States subsidiaries and all are separate and independent entities, with their
19 own corporate formalities. (Barrick Gold's App. 154-155.)

20 The Implementation Agreement between Barrick Gold and Newmont combining their
21 respective subsidiaries' mining assets and operations in Nevada, and the subsequent
22 Limited Liability Agreement forming NGM, do not constitute contacts by which Barrick Gold
23 purposefully availed itself of the benefits and protection of Nevada. Bullion relies heavy on the
24 fact that the Implementation Agreement required Barrick Gold's subsidiaries to transfer their
25 assets and properties in Nevada into NGM. These actions reflect no more than a normal
26 parent-subsidiary relationship in this context and does not demonstrate purposeful availment.

27 ⁵ Bullion's alter-ego theory is not a cause of action; *a fact Bullion has confessed*. (See
28 Bullion's Opp'n to Goldstrike & Exploration's Mot., 4:16-20, on file, Aug. 21, 2020) ("Bullion
agrees . . . that alter ego is a remedy . . . not a cause of action itself.")

1 *Sonora*, 99 Cal. Rptr. 2d at 841–42 ("However, we have already pointed out that a parent
2 corporation's *formation* and ownership of an independent subsidiary for the purpose of conducting
3 business in the forum state does not itself subject the parent to jurisdiction in that state.");
4 *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 381, 328 P.3d 1152, 1160 (2014) ("The fact
5 that German Viega *created* American subsidies to conduct business in Nevada does not itself
6 demonstrate agency.").

7 Bullion's reliance on the Limited Liability Agreement's choice of forum provision is even
8 more frivolous. As the language makes clear, the parties were only agreeing to submit to the
9 jurisdiction of Nevada for "matters *relating* to this Agreement and the rights and obligations of
10 the Parties hereunder." (Barrick Holding's App. 354). In other words, this choice of forum
11 provision applies only to disputes arising out of that agreement. There is no law from anywhere
12 that supports Bullion's preposterous proposition that a choice of forum provision in an unrelated
13 contract somehow demonstrates purposeful availment in an unrelated dispute.

14 **2. Bullion's claims do not arise from the NGM transaction.**

15 A rather shocking argument to make ten years into a litigation, Bullion's claims do not
16 "arise" from the Implementation Agreement and the subsequent Limited Liability Agreement
17 forming NGM. Bullion is not a party to, and has no rights or claims arising from, either
18 agreement. Bullion's "claims," as opposed to remedies plead as causes of actions – for declaratory
19 relief, breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust
20 enrichment, *arise from* the 1979 Agreement, which it claims runs with the land and thus anyone
21 who acquired the Subject Property became bound by the 1979 Agreement and the purported
22 obligation to pay royalties on mineral production within the Area of Interest. Barrick Gold does
23 not own any land in Nevada, much less any land that would remotely be subject to Bullion's
24 claims. (Barrick Gold's App. 150-153.)

25 Bullion's meager attempt to distinguish *Viega* on this point fails. Just like in *Viega*, where
26 the foreign parent company had no relation to the substantive claims (*i.e.*, it did not manufacture
27 or distribute the alleged faulty plumbing parts), here Barrick Gold, itself, does not own any land
28 or operate any mine subject to Bullion's substantive claims. Instead, Bullion is seeking to drag

1 Barrick Gold into this action based on allegations that its subsidiaries who own the land and
2 operate the mines are the purported agent or alter ego of Barrick Gold. Bullion's substantive
3 claims based on the 1979 Agreement do not "arise" from Barrick Gold's corporate structure or the
4 transaction that led to NGM in the exact same way the plaintiff's defect claims in *Viega* did not
5 arise from defendant's corporate structure or formation of subsidiaries.

6 The *Sonora* decision is instructive. There, after determining that the parent corporation,
7 Diamond, was not subject to jurisdiction under an alter ego or agency theory, the court addressed
8 whether the parent was subject directly to specific personal jurisdiction. Importantly, the court
9 found that the actions of Diamond with respect to its subsidiary, Sonora, "even if it is assumed
10 such actions constituted purposeful availment (which they did not), cannot provide the basis of
11 specific jurisdiction in this dispute" because those actions have no relation or connection to
12 plaintiff's claims over a contract with Sonora for endowment payments from the mine. *Sonora*,
13 99 Cal. Rptr. 2d at 848.

14 Bullion's case is no different. Bullion's claims arise from the 1979 Agreement; not the
15 agreements or transaction that led to the creation of NGM. Indeed, Bullion's prior attempt to name
16 Barrick Gold as defendant nearly a decade ago is a confession of this obvious fact.

17 **3. Exercising jurisdiction over Barrick Gold is not reasonable.**

18 "[Q]uestions involving personal jurisdiction mandate an inquiry whether it is reasonable to
19 require the defendant to defend the particular suit which is brought there." *Trump v.*
20 *Eighth Jud. Dist. Ct.*, 109 Nev. 687, 700–01, 857 P.2d 740, 749 (1993) (citations and quotations
21 omitted). "Factors relevant to this inquiry are: (1) the interstate judicial system's interest in
22 obtaining the most efficient resolution of controversies; (2) the forum state's interest in
23 adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief;
24 and (4) the interest of the several states in furthering substantive social policies." *Id.* Moreover,
25 where an international defendant is concerned, a court must also "consider the procedural and
26 substantive policies of other nations whose interests are affected by the assertion of jurisdiction
27 by the [Nevada] court." *Asahi Metal Indus. Co. v. Superior Ct. of California, Solano Cty.*,
28 480 U.S. 102, 115 (1987)

1 Subjecting Barrick Gold to jurisdiction here merely because it is the ultimate foreign
2 parent company of subsidiaries operating in Nevada would be unreasonable and also contrary to
3 the corporate business structures created by the Nevada Legislature. Contrary to Bullion's
4 assertion, this case is not about Barrick Gold's "interference in property arrangements in Nevada"
5 or the "creation of a Nevada joint venture." (*See* Bullion's Opp'n, 18:3-9.) Bullion's claims are
6 premised on the notion that it is owed royalty from mineral properties in Nevada. Barrick Gold
7 does not own any land or operate any mines in Nevada. Importantly, ***Bullion does not – and***
8 ***cannot – show that it needs to drag a foreign corporation into this case to achieve a remedy.***
9 The subsidiaries – *i.e.*, the separate corporate entities that operate in and do business in Nevada –
10 that own the land purportedly subject to Bullion's royalty claim have been named in this case.
11 Moreover, and importantly given the spurious arguments that the remedies of constructive trust
12 and alter ego are needed here to protect Bullion, there is no evidence that any of these subsidiaries
13 are undercapitalized in the event of an adverse result. *See F. Hoffman-La Roche, Ltd. v.*
14 *Superior Court*, 30 Cal. Rptr. 3d 407, 424-25 (Cal. Ct. App. 2005) (finding that it was
15 unreasonable to subject a foreign parent company to jurisdiction where the plaintiff was not left
16 without a remedy and no jurisdictional barrier to pursue their claims against the subsidiaries with
17 no hint of evidence the subsidiaries were incapable of responding to damages). Just because
18 Bullion wants the foreign parent in the case does not mean that there is a legal basis for it. There
19 is not. And just because Bullion wants the foreign parent in this case does not mean it is
20 reasonable to haul the foreign parent into court here. It is not.

21 ***4. Jurisdiction did not exist when Bullion filed the complaint, and does***
22 ***not exist now.***

23 Bullion makes much over the fact that Barrick Gold's declaration supporting the lack of
24 jurisdiction in Nevada focuses on the time-frame prior to and up to the date Bullion filed this
25 action in state court. (*See* Bullion's Opp'n, 7:18-8:21.) There is no merit to Bullion's insinuation
26 that Barrick Gold is trying "to shift the conversation." Indeed, this Court's jurisdiction depends
27 upon "the state of things at the time of the action brought." *Grupo Dataflux v. Atlas Glob.*
28 *Grp., L.P.*, 541 U.S. 567, 570; *In re Digimarc Corp. Deriv. Litig.*, 549 F.3d 1223, 1236

1 (9th Cir. 2008). Much should, however, be made over Bullion trying to ignore the law (relying
2 on a law review article) and its request that the Court disregard that same law and its original
3 complaint.

4 In any event, even if Bullion is correct (and it is not) that the Court can consider events
5 after the action is brought for personal jurisdiction, Bullion still fails to show that Barrick Gold is
6 subject to jurisdiction in Nevada. Again, Bullion relies exclusively on its purported supplemental
7 allegations "regarding the 2019 joint venture agreement." (*See* Bullion's Opp'n, 8:10-21.)
8 Bullion's claims do not arise from this transaction. *Dogra*, 129 Nev. at 937, 314 P.3d at 955
9 (cause of action must arise from defendant's purposeful contact or activities in connection with
10 the forum state). Tellingly, Bullion fails to point to any "cause of action" that arises from any of
11 Barrick Gold's alleged "contact or activities" in Nevada as it pertains to "2019 joint venture." In
12 fact, and as discussed above, Bullion's prior voluntary dismissal proves this point and is, among
13 other reasons, why it is relevant.

14 **B. There is No Basis for an Agency or Alter Ego Theory for Jurisdiction.**

15 ***1. Barrick Gold and its subsidiaries are presumed separate.***

16 Also ignored throughout Bullion's opposition is the presumption long recognized by
17 Nevada that corporate entities are presumed separate. *LFC Mktg. Grp., Inc. v. Loomis*,
18 116 Nev. 896, 902, 8 P.3d 841, 845 (2000); *Gardner on Behalf of L.G. v. Eighth Jud. Dist. Ct.*,
19 133 Nev. 730, 733, 405 P.3d 651, 654 (2017); *Viega*, 130 Nev. at 375, 328 P.3d at 1157. This is
20 the starting point of the analysis. The Nevada Supreme Court has "emphasized that '[t]he
21 corporate cloak is not lightly thrown aside.'" *LFC Mktg. Grp., Inc.*, 116 Nev. at 903-04, 8 P.3d
22 at 846 (quoting *Baer v. Amos J. Walker, Inc.*, 85 Nev. 219, 220, 452 P.2d 916, 916 (1969)).
23 "Subsidiaries' contacts have been imputed to parent companies ***only under narrow exceptions*** to
24 this general rule, including alter ego theory and, at least in cases of specific jurisdiction, the
25 agency theory." *Viega*, 130 Nev. at 375, 328 P.3d at 1157 (emphasis added).

26 Bullion's opposition seeks to flip this presumption on its head. It is not Barrick Gold's
27 burden to show that it is a separate and distinct legal entity from its subsidiaries. The law
28

1 presumes as much. Instead, it is Bullion's obligation to produce some evidence to overcome this
2 presumption so that the corporate cloak may be thrown aside. Bullion fails, and miserably so.

3 **2. Bullion fails to make a prima facie case on its agency theory.**

4 Bullion's opposition fails to proffer any evidence to support an agency theory of personal
5 jurisdiction under the exacting standard the Nevada Supreme Court set forth in *Viega* as it
6 pertains to a parent corporation and its subsidiaries. Remarkably, Bullion seems to imply that this
7 Court should disregard *Viega*'s standard that requires **Bullion to show** that Barrick Gold's control
8 is **so pervasive** that it veers "into management by the exercise of control over the internal affairs
9 of the subsidiary and the determination of how the company will be operated on a day-to-day
10 basis such that the parent has moved beyond the establishment of general policy and direction for
11 the subsidiary and in effect taken over performance of the subsidiary's day-to-day operations in
12 carrying out that policy." *Viega*, 130 Nev. at 379, 328 P.3d at 1159 (quotations and citations
13 omitted). The fact that Bullion does not even attempt to distinguish *Viega*, and instead seeks to
14 avoid it entirely, should tell the Court all it needs to know.

15 Barrick Gold has presented undisputed evidence that it supervises its subsidiaries to the
16 same degree that the *Viega* Court found insufficient for an agency jurisdictional theory.⁶ Bullion's
17 opposition fails to present even the slightest whiff of evidence that a different result should be
18 reached here. Instead, Bullion offers two unsupported, and incoherent, sentences that
19 Barrick Gold is purportedly "the principal of both Barrick Goldstrike and Barrick Exploration,"
20 and that "Barrick Exploration as Barrick Goldstrike's sole shareholder had – and exercised – [the
21 right to substantial control.]" (*See* Bullion's Opp'n 10:4-14.) Bullion fails to even allege, much
22 less present evidence, that Barrick Gold's control over its subsidiaries was so pervasive that it
23 veered into the management and the day-to-day operation of any subsidiary. The evidence
24 presented, which is undisputed, debunks any notion of this fact.

25 _____
26 ⁶ When a plaintiff fails to present evidence or limited evidence to support personal
27 jurisdiction, greater weight is given to the sworn declarations presented by defendants. *See*
28 *BBA Aviation PLC v. Superior Court*, 190 Cal. App. 4th 421, 432, 117 Cal. Rptr. 3d 914, 924
(2010) ("Given Engen's limited evidence, greater weight should be placed on the sworn
declarations of Gerwien and Stone.")

1 Realizing as much, Bullion offers a Hail-Mary, selectively cherry-picking certain
2 language of the Implementation Agreement. According to Bullion, provisions of the
3 Implementation Agreement and schedules attached thereto relating to form deeds to be executed
4 by the subsidiaries, purportedly proves the agency between Barrick Gold and its subsidiaries. (See
5 Bullion's Opp'n 10:15-11:7.) It does not. Neither the Implementation Agreement itself nor any
6 language contained therein establishes that Barrick Gold's control is so pervasive that it veered
7 into the management and the day-to-day operation of any subsidiary as *Viega* requires. ***Instead, it***
8 ***is exactly the type of conduct within the normal expectation of the parent-subsidiary***
9 ***relationship.*** *Sonora*, 99 Cal. Rptr. 2d at 842 ("[T]he fact that Diamond was involved in the initial
10 financing of the mine operation was not conduct outside the normal expectations of the
11 parent-subsidiary relationship.").

12 In addition, Bullion's Opposition fails to make any showing that there is any nexus
13 between its claims and any purported agency. *Viega*, 130 Nev. at 381, 328 P.3d at 1160 ("And
14 even if, as the HOA asserts, American Viega is German Viega's agent for American operations
15 and the face of American marketing, the HOA has not shown that that particular agency has
16 resulted in the basis for the claims at issue here"). Again, the transaction that led to the
17 creation of NGM is not, and does not, form the basis (or even a part of the basis) of Bullion's
18 royalty claims.

19 **3. Bullion fails to make a prima facie case on the alter ego doctrine for**
20 **jurisdictional purposes.**

21 Rather than produce evidence to satisfy its burden to make a *prima facie* case on the
22 alter ego doctrine for jurisdictional purposes, Bullion's opposition relies upon on the allegations in
23 its complaint. *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1021 (9th Cir. 2017) (noting that
24 plaintiff must make out a *prima facie* case on the alter ego requirements for personal jurisdiction).
25 The law, of course, requires Bullion to go beyond the pleadings and proffer some competent
26 evidence supporting a finding of alter ego to support jurisdiction. *Trump*, 109 Nev. at 693,
27 857 P.2d at 744 (explaining that the plaintiff "may not simply rely on the allegations of the
28 complaint to establish personal jurisdiction"). Bullion failed to present any evidence that would

1 support a finding that Barrick Gold's subsidiaries are its alter ego,⁷ and its failure to meet its
2 burden should end the legal debate.

3 Even the allegations in its recently amended complaint (if assumed to be true, which is
4 decidedly not the standard here), are deficient to support a viable alter ego argument. The
5 alter-ego doctrine requires that "(1) the corporation must be influenced and governed by the
6 person asserted to be the alter ego; (2) there must be such unity of interest and ownership that one
7 is inseparable from the other; and (3) the facts must be such that adherence to the corporate fiction
8 of a separate entity would, under the circumstances, sanction fraud or promote injustice." *Polaris*
9 *Indus. Corp. v. Kaplan*, 103 Nev. 598, 601, 747 P.2d 884, 886 (1987). In assessing these
10 requirements, courts look at whether there has been "co-mingling of funds, undercapitalization,
11 unauthorized diversion of funds, treatment of corporate assets as the individual's own, and failure
12 to observe corporate formalities." *Id.*

13 The uncontested evidence that Barrick Gold has submitted shows that no funds have been
14 co-mingled or improperly diverted, all of Barrick Gold's subsidiaries are adequately capitalized
15 for their purposes, Barrick Gold does not treat its subsidiaries assets as its own, and Barrick Gold
16 and its subsidiaries carefully maintain all necessary formalities, including separate boards,
17 officers, bank accounts, and corporate records. (Barrick Gold's App. 155.) Rather than address the
18 alter ego requirements and produce competent evidence to support a finding, as the law requires,
19 Bullion proffers a hodgepodge of equally unavailing arguments (arguments unsupported by any
20 evidence, and contrary to the evidence before the Court) in opposition. None of these arguments,
21 individually or collectively, are evidence, and none support a finding of alter-ego⁸

22
23 ⁷ Bullion also claims that Barrick Gold is confusing the "nerve center test with alter-ego." It
24 is not. Instead, Barrick Gold is simply highlighting the fact that Bullion's story that Barrick Gold
25 controlled its subsidiaries activities was already rejected by the federal court. (Barrick Gold's
26 App. 76). Since Bullion abandoned its appeal with the Ninth Circuit that decision is binding, final,
27 and Bullion cannot circumvent the federal court's finding - that Barrick Gold did not control its
28 subsidiaries - through this litigation. As the Nevada Supreme Court explains "issue preclusion is
applied to conserve judicial resources, maintain consistency, and avoid harassment or oppression
of the adverse party." *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev.
Adv. Op. 28, 321 P.3d 912, 916 (2014).

⁸ Because Bullion cannot show that Barrick Gold would be subject to general jurisdiction in
Nevada, even if the Court determines that one entity is the alter ego of the other, Bullion asserts

1 a. Barrick Gold's mere ownership in subsidiaries operating in Nevada
2 is insufficient.

3 Bullion claims that Barrick Gold "cannot do indirectly what it cannot do directly." (See
4 Bullion's Opp'n 12:25-13:15.) Although it is not entirely clear what Bullion is referring to or how
5 this factors into an alter-ego analysis, it seems Bullion is insinuating that Barrick Gold's
6 subsidiary structure is set up with one purportedly "bearing the burden of Bullion's royalty" and
7 others "reaping the benefit" to leave "Bullion empty-handed." (*Id.*) Hardly. There is absolutely no
8 evidence that the subsidiaries that actually own and mine the land in Nevada are undercapitalized
9 to purportedly leave "Bullion empty-handed." In fact, the evidence has shown that the subsidiaries
10 that are actually subject to jurisdiction here are adequately capitalized for their purposes.
11 (Barrick Gold's App. 155.)

12 In any event, Bullion's hollow allegations that it may be left "empty-handed" are legally
13 insufficient. *Sonora*, 99 Cal. Rptr. 2d at 837. ("Difficulty in enforcing a judgment or collecting a
14 debt does not satisfy [the alter ego] standard.") Barrick Gold is not attempting to "escape liability"
15 as Bullion nonsensically claims. Rather, as a matter of law, Barrick Gold is not subject to liability
16 under the alter ego doctrine merely because it owns a subsidiary that may be ultimately subject to
17 liability for Bullion's claims. *Bonanza Hotel Gift Shop, Inc. v. Bonanza No. 2*, 95 Nev. 463, 466,
18 596 P.2d 227, 229 (1979) ("A mere showing that one corporation is owned by another, or that the
19 two share interlocking officers or directors is insufficient to support a finding of alter ego.").

20 Nor does Bullion's theory find any support in the *Paneno v. Centres for Acad.*
21 *Programmes Abroad Ltd.*, 13 Cal. Rptr. 3d 759 (2004), decision. The plaintiff in *Paneno*, a
22 student who had contracted with a California affiliate of a British company for education abroad
23

24 that it need not make such a showing. (See Bullion's Opp'n 9:4-10:2.) Bullion is wrong. The
25 United States Supreme Court expressly states as much in *Daimler AG v. Bauman*, 571 U.S. 117,
26 136 ("Even if we were to assume that [the domestic subsidiary] is at home in California, and
27 further to assume that [its] contacts are imputable to [the foreign parent corporation], there would
28 still be no basis to subject [the parent] to general jurisdiction in California, for [the parent's] slim
contacts with the State hardly render it at home there."). Moreover, courts have interpreted
Daimler providing for the same. *In re Packaged Seafood Prod. Antitrust Litig.*, 338 F. Supp. 3d
1118, 1143 (S.D. Cal. 2018) ("*Daimler* also makes clear that even if the Court determines that one
entity is the alter ego of the other, the foreign entity's activities in the forum jurisdiction must still
meet the general jurisdiction requirements of being essentially at home.").

1 services, was severely injured on the premises of his leased residence in Italy. It was the British
2 company that actually administered the programs and had entered into contracts with local entities
3 in the home countries to house the foreign students. The California affiliate was not a subsidiary
4 of the British company, but rather an "administrative arm" of the British company. *Paneno*,
5 13 Cal. Rptr. 3d at 759. While the students would pay their money to the California affiliate, it
6 would in turn transmit the funds directly to the British company. *Id.* In affirming the exercise of
7 general jurisdiction over the British company, the court emphasized that the two companies had
8 specifically designed their operating structure by "trickery" - with one company to recruit students
9 and the other to provide accommodations abroad - all to avoid having to answer for claims in
10 California. *Id.* at 759.

11 There is no evidence here that the corporate structure is designed or conducted through
12 "trickery or deception" to avoid having to answer to claims in Nevada. The *Paneno* Court's
13 concern with forcing the plaintiff there to sue abroad is irrelevant here where the subsidiaries that
14 own the land and the minerals from which Bullion seeks a royalty are named defendants in this
15 action and remain answerable to Bullion's claim in Nevada.

16 b. Barrick Gold maintains all corporate formalities and there has been
17 no sharing of "management" or "assets."

18 Bullion's allegations (unsupported by any evidence) that Barrick Gold purportedly shared
19 "management," "assets" and failed to observe corporate formalities is similarly refuted by the
20 undisputed evidence Barrick Gold has presented. Indeed, once again, Bullion fails to present even
21 the slightest amount of *evidence* that would support its allegations. Instead, the evidence that has
22 been proffered to the Court shows that Barrick Gold maintains separate accounting for each of its
23 subsidiaries according to generally accepted accounting principles, none of Barrick Gold's
24 subsidiaries' funds have been improperly "diverted" to anyone, Barrick Gold does not treat its
25 subsidiaries' assets as its own, and Barrick Gold and its subsidiaries carefully maintain all
26 necessary formalities, including separate boards, officers, bank accounts, and corporate records.
27 (Barrick Gold's App. 155.)
28

1 Nonetheless, in Opposition Bullion claims that "Goldstrike and Exploration share the
2 same slate of officers, directors, and management," which were purportedly "employees of
3 Barrick Gold North America Inc. (BGNA)." (*See* Bullion's Opp'n 13:19-22.) Yet, even assuming
4 these allegations are true (they are not), Bullion fails to explain how this shows that the
5 subsidiaries are nothing more than the alter ego of Barrick Gold. Bullion does not even allege,
6 much less present any evidence, that Barrick Gold shared the same "officers, directors, and
7 management" of any of its subsidiaries. But, even if it did, interlocking officers or directors
8 between two corporations is insufficient to support a finding of alter ego. *Bonanza*, 95 Nev. at
9 466, 596 P.2d at 229.

10 Similarly unavailing is Bullion's claim that witnesses "designated under Rule 30(b)(6) to
11 represent Goldstrike in the federal lawsuit" purportedly did not know Goldstrike's corporate
12 structure. (*See* Bullion's Opp'n 13:24-26.) Although Bullion's allegation is again false, Bullion
13 fails to provide any authority that this would lead to the remarkable conclusion that the
14 subsidiaries are Barrick Gold's alter ego. Indeed, the testimony from the federal lawsuit shows
15 that Barrick Gold's subsidiaries were *not* so organized and controlled that they were nothing more
16 than the "mere instrumentality or adjunct" of Barrick Gold. *Id.* ("It must further be shown that the
17 subsidiary corporation is so organized and controlled, and its affairs are so conducted that it is, in
18 fact, a mere instrumentality or adjunct of another corporation.").

19 Bullion likewise fails to produce any evidence that Barrick Gold shared any assets with its
20 subsidiaries. Barrick Gold, itself, does not have any employees, an office, bank accounts, or any
21 other intangible or tangible assets in Nevada. (Barrick Gold's App. 150-152.) Barrick Gold does
22 not itself engage in mining or processing activities or operate mining or processing facilities
23 within Nevada or the United States. (*Id.*) Barrick Gold does not itself own any equipment or
24 facilities to conduct mining or processing activities in Nevada or the United States. (*Id.*) Nor does
25 the transaction and subsequent creation of NGM change these facts. NGM is a subsidiary of
26 Barrick Gold through a lengthy chain of separately incorporated United States subsidiaries.
27 Barrick Gold does not share any assets with NGM. (*Id.*)
28

1 Bullion also claims that "Goldstrike failed to observe corporate formalities," by allegedly
2 "not holding the annual meeting or other board meetings called for under Goldstrike's governing
3 documents and by not registering to do business in Utah." (*See* Bullion's Opp'n 14:19-23.) Again,
4 Bullion does not present any evidence to support these contentions. But, even if it did, Bullion
5 fails to explain how this leads to the conclusion that Barrick Gold did not observe corporate
6 formalities with respect to its subsidiaries. Whether Goldstrike registered to do business in Utah is
7 irrelevant to whether Goldstrike is the alter ego of Barrick Gold. Moreover, as Bullion's own
8 allegations confess, Goldstrike's maintained its own separate "governing documents." And,
9 contrary to Bullion's insinuation, these separate governing documents permitted Goldstrike's
10 board to act by resolutions as opposed to holding meetings. (*See* Ex. 5 to Bullion's
11 Opp'n 10:13-11:7.)⁹

12 Barrick Gold and its subsidiaries carefully maintain all necessary formalities, including
13 separate boards, officers, bank accounts, and corporate records. (Barrick Gold's App. 155.)
14 Bullion fails to present anything suggestion otherwise. *See Bonanza*, 95 Nev. at 467, 596 P.2d
15 at 230 (subsidiary was not the alter ego of a parent corporation when the two entities maintained
16 separate corporate books and accounts, held separate directors' meetings, recorded separate
17 minutes with full corporate formalities, and had independent headquarters).

18 c. There is no injustice or undercapitalization.

19 There is no merit to Bullion's assertion that the formation of NGM and Barrick Holding
20 purportedly "confirms the injustice." (*See* Bullion's Opp'n 14:25-26.) As part of the transaction,
21 all of Goldstrike's assets were contributed to and all Goldstrike's liabilities were assumed by
22 NGM. (Barrick Holding's App. 100-101.) Bullion fails to make any showing that any injustice
23 will result if the adherence to the corporate fiction of a separate entity between Barrick Gold and
24 its subsidiaries is maintained. Goldstrike, Exploration, and NGM are all defendants in this action
25 and remain answerable to Bullion's claim in Nevada. All of these entities are adequately
26

27 ⁹ Goldstrike's board was not obligated to hold meetings. Colo. Rev. Stat. Ann. § 7-108- 201
28 (West). Goldstrike's bylaws specifically authorized the board to take any action with unanimous
written consent, which is specifically permitted under the laws of the state where Goldstrike is
organized. Colo. Rev. Stat. Ann. § 7-108-202 (West).

1 capitalized for their purpose. (Barrick Gold's App. 155.) Indeed, according to Bullion's own
2 Opposition, NGM is the entity with "substantial mineral assets." (*See* Bullion's Opp'n 15:9-10.)

3 Moreover, "[t]he alter ego doctrine does not guard every unsatisfied creditor of a
4 corporation but instead affords protection where some conduct amounting to bad faith makes it
5 inequitable for the corporate owner to hide behind the corporate form. Difficulty in enforcing a
6 judgment or collecting a debt does not satisfy this standard." *Sonora*, 99 Cal. Rptr. 2d at 837.
7 Whether or not Bullion will be able to collect on any judgment is legally irrelevant. Bullion has
8 presented no evidence amounting to bad faith, and any notion that the transaction leading to NGM
9 was somehow done to avoid Bullion's royalty is nonsensical, and unsupported by any evidence.

10 **C. Bullion's (False) Allegations Contained in the Complaint are Irrelevant.**

11 Bullion relies heavily, and almost exclusively, on the allegations in its latest amended
12 complaint in its Opposition. As the Nevada Supreme Court has made clear, when considering a
13 motion to dismiss for lack of personal jurisdiction, Bullion "may not simply rely on the
14 allegations of the complaint to establish personal jurisdiction" *Trump*, 109 Nev. at 693, 857 P.2d
15 at 744. Instead, Bullion "must produce some evidence in support of all facts necessary for a
16 finding of personal jurisdiction." *Id.* Bullion failed to proffer competent evidence establishing
17 personal jurisdiction over Barrick Gold, and the Court should disregard all contentions that are
18 only support by the mere allegations in Bullion's own complaint.

19 **D. There is No Basis for Jurisdictional Discovery.**

20 In opposition to Barrick Gold's motion to dismiss for lack of personal jurisdiction, Bullion
21 includes a rather odd request for Rule 56(d) relief. (*See* Bullion's Opp'n 15:14-22.) Because
22 procedurally Rule 56(d) relief is unavailable here, Barrick Gold presumes Bullion is seeking
23 jurisdictional discovery, which the Court should deny.

24 The Nevada Supreme Court was clear in *Viega* that a plaintiff is not entitled to
25 jurisdictional discovery when it shows "no more than a typical parent-subsidary relationship, the
26 separateness of which is a basic premise of corporate law." *Viega*, 130 Nev. at 382, 328 P.3d
27 at 1161. In *Viega*, the Court squarely held that courts "may not create exceptions" – such as
28 permitting jurisdictional discovery – to help a plaintiff "get around" the "problems in overcoming

1 the presumption of separateness [that] are inherent in attempting to sue a foreign corporation that
2 is part of a carefully structured corporate family." *Id.* Bullion has not made any showing that
3 jurisdictional discovery is warranted here. Bullion should not be given an opportunity to mine for
4 a basis to drag Barrick Gold into this forum.

5 The unsigned declaration from "Bullion's experts" does not confirm that jurisdictional
6 discovery is necessary. Nothing within Bullion's purported expert's declaration indicates what
7 specific jurisdictional discovery is needed, nor what specifically Bullion seeks to uncover or how
8 that will prove jurisdiction here as it relates to Barrick Gold. A mere hunch that discovery might
9 yield jurisdictionally relevant facts is insufficient. *See Boschetto v. Hansing*, 539 F.3d 1011, 1020
10 (9th Cir. 2008) (affirming district court's denial of jurisdictional discovery that was based on little
11 more than a hunch).

12 Moreover, Bullion should not be given the benefit of the doubt at this point. Bullion has
13 been litigating this case for over a decade. Bullion received jurisdictional discovery in the federal
14 lawsuit and this Court permitted Bullion to conduct jurisdictional discovery as it relates to ABX,
15 only for Bullion to voluntarily dismiss this defendant after wasting significant time and resources
16 to confirm what was already known and available to Bullion. As the Nevada Supreme Court
17 recently made clear, if a party had the benefit of discovery from a prior litigation before filing the
18 complaint and still fails to allege facts indicating the court might have jurisdiction, then
19 jurisdictional discovery is properly denied. *Tricarichi v. Coop. Rabobank, U.A.*, 135 Nev. 87, 98,
20 440 P.3d 645, 654 (2019) (finding the district court did not abuse its discretion in denying
21 jurisdictional discovery because plaintiff had the benefit of discovery from a prior proceeding and
22 still failed to allege facts indicating the court might have jurisdiction).

23 **E. Any Direct Claims against Barrick Gold are Time Barred.**

24 To the extent Bullion even has viable direct claims against Barrick Gold, those claims
25 present a fundamentally different statute of limitations issue than the Court previously addressed
26 with respect to Goldstrike. Unlike the prior arguments that focused upon Nevada's savings statute,
27 here any purported direct claims against Barrick Gold do not face a similar issue. Instead,
28

1 Bullion's strategic decision to sit upon its purported claims after voluntarily dismissing Barrick
2 Gold leaves no one to blame but itself for its failure to timely enforce its purported rights.

3 ***1. Bullion's claims accrued no later than 2009.***

4 The law is clear: "In the event a plaintiff elects to sue upon the anticipatory breach [of a
5 contract] and not the promisor's actual nonperformance, the accrual date of the cause of action is
6 accelerated from time of performance to the date of such election." *Schwartz v. Wasserburger*,
7 117 Nev. 703, 707, 30 P.3d 1114, 1116 (2001). Here, Bullion elected to sue Barrick Gold (along
8 with Goldstrike) in June 2009 for breach of contract seeking declaratory relief to resolve the
9 "parties' dispute as to whether Bullion is entitled to royalties" under the 1979 Agreement.
10 (Barrick Gold's App. 007). All of Bullion's claims, if any, against Barrick Gold, including for
11 purported future breaches of the 1979 Agreement, accelerated and accrued at that time. *See*
12 54 C.J.S. Limitations of Actions § 190 ("A cause of action in contract cases ... accrues either on
13 the date that performance under the contract is due or, if the plaintiff so elects, on the date that the
14 plaintiff sues upon the anticipatory breach." (citing *Schwartz*, 117 Nev. at 707, 30 P.3d at 1116)).

15 Yet, after filing these claims against Barrick Gold in 2009, Bullion chose to dismiss
16 Barrick Gold, and during the next decade or so decided to sit upon its purported claims. Rather
17 than timely enforce its rights, Bullion filed its claims against Barrick Gold in this case in late
18 2018, nearly three years too late under NRS 11.190. But, according to Bullion, its strategic
19 decision should have no consequence, and it apparently has a statute of limitations of "seven
20 decades." (*See* Bullion's Opp'n 22:6-7.) Nonsense. The *Schwartz* decision prevents the absurd
21 results Bullion advances.

22 *Schwartz's* holding comports with the "rule against splitting of causes of action," which
23 prohibits a claim from being "split up or divided and separate suits maintained for the various
24 parts thereof." *Reno Club, Inc. v. Harrah*, 70 Nev. 125, 129, 260 P.2d 304, 306 (1953). This rule
25 applies particularly to situations where "[i]t is not . . . a new cause of action which is presented in
26 the [second suit], but a new remedy which is sought" on prior claims. *Id.* at 132; *see also* Corbin
27 on Contracts § 54.29 ("If, in the first action . . . he fails to make proof of any part of his injury,
28 whether past or future, his right to compensation therefor will be forever barred.").

1 Bullion's claim that it purportedly "could not accelerate its right to future royalty payments
2 because it depends on an unknowable fact" defies common sense and the law. ***Damages for***
3 ***future royalty payments are no different than any other future losses that are routinely sought***
4 ***in contractual cases.*** After all, compensatory damages are "awarded to make the aggrieved party
5 whole" which obviously includes "awards for lost profits or expectancy damages." *Rd. &*
6 *Highway Builders v. N. Nev. Rebar*, 128 Nev. 384, 392, 284 P.3d 377, 382 (2012). Cases
7 involving unmined minerals are no different. And, the Nevada Supreme Court has had to address
8 these issues for some time. Bullion's novel attempt to get around long-settled Nevada law on
9 mining issues should be rejected.

10 Going all the way back to 1900, the Nevada Supreme Court held in *Paul v. Cragnas*,
11 25 Nev. 293, 59 P. 857, 862 (1900), that evidence of the expected amount of silver that could be
12 mined was enough to prove with "reasonable probability" the damages sustained over the life of
13 the breached contract. *Id.* Moreover, even when it's not clear that a party can prove all its
14 damages, "[a]n action accrues when the litigant discovers . . . the existence of damages, not the
15 exact numerical extent of those damages." *Siragusa v. Brown*, 114 Nev. 1384, 1394,
16 971 P.2d 801, 808 (1998); Limitation of Actions § 7.2.1 ("The statute of limitations for a breach
17 of contract begins to run at the time of such breach, even when the extent of actual damages is not
18 then ascertainable.").

19 Thus, Bullion's novel "continuing breach" theory is barred by *Schwartz*. In addition and
20 relatedly, Bullion's reliance upon *Clayton v. Gardner*, 107 Nev. 468, 813 P.2d 997 (1991), is
21 misplaced.¹⁰ *Clayton* merely holds that when a party breaches an installment contract requiring
22 regular payments of a specific amount, the non-breaching party may either elect to accelerate the
23 future obligations of the contract by "fil[ing] suit immediately" or "allow borrowers a chance to
24 cure" by waiting to file suit. *Clayton*, 107 Nev. at 471 n.3, 813 P.2d at 999 n.3. The 1979
25 Agreement does not provide for "set installment payments" with an established amount due on a
26

27 ¹⁰ Bullion also seems to imply that its claim for unjust enrichment is someone equally saved
28 by this theory. (See Bullion's Opp'n 23:1-28.) It isn't. Unjust enrichment is subject to a four-year
statute of limitations. NRS 11.190(2)(c). Bullion's claim for unjust enrichment accrued just like its
contractual claim, *i.e.*, no later than 2009.

1 regular and recurring basis. Even if it did, however, Bullion elected to sue anticipatorily, thereby
2 accelerating all of its claims under *Schwartz*.

3 **2. Bullion's claim for declaratory relief is barred.**

4 Bullion's declaratory relief claim is also subject to the statute of limitations for a breach of
5 contract claim. The Nevada Supreme Court's decision in *City of Fernley v. State, Dep't of Tax*,
6 132 Nev. 32, 366 P.3d 699 (2016), has no application to Bullion's declaratory relief claim seeking
7 to enforce a purported contract for damages.

8 The *Fernley* decision merely held that the statutes of limitations did not bar a plaintiff's
9 claims for injunctive and declaratory relief to prevent future violations of their constitutional
10 rights. *City of Fernley*, 132 Nev. at 44, 366 P.3d at 708. Thus, when declaratory relief seeks to
11 prevent future violations of constitutional rights, the statute of limitations does not bar such relief
12 because to "hold otherwise would undermine the doctrine of constitutional supremacy." *Id.*

13 Bullion is not seeking declaratory relief to prevent future violations of constitutional
14 rights. Instead, Bullion is seeking declaratory relief that it is entitled to royalties based upon a
15 purported contractual right and alleged breaches of the same. Nothing within in the *Fernley*
16 decision remotely stands for the proposition that Bullion's declaratory relief claim has no statute
17 of limitations. Bullion's claim for declaratory relief based on a contract are subject NRS 11.190.
18 *See Job's Peak Ranch Cmty. Ass'n, Inc. v. Douglas Cty.*, 131 Nev. 1304 (2015) (unpublished
19 disposition) ("claims for declaratory relief . . . based on breach of a written contract expire after
20 six years, NRS 11.190(1)(b)").

21 **3. Alter-ego is a remedy, not a claim.**

22 Bullion oddly includes an argument about its newly-minted allegations pertaining to the
23 alter ego doctrine. Bullion fails to explain the relevance of these allegations towards any statute
24 of limitations argument. In any event, to be clear, alter ego is a remedy, not a substantive claim
25 for relief. *Local v. Nor-Cal Plumbing, Inc.*, 185 F.3d 978, 985 (9th Cir.1999) ("A request to
26 pierce the corporate veil is only a means of imposing liability for an underlying cause of action
27 and is not a cause of action in and of itself."); *Deal v. 999 Lakeshore Ass'n*, 579 P.2d 775 (1978).

1 Bullion agrees. (See Bullion's Opp'n to Goldstrike & Exploration's Mot., 4:16-20, on file,
2 Aug. 21, 2020) ("Bullion agrees . . . that alter ego is a remedy . . . not a cause of action itself.")

3 Even though there is no merit to Bullion's alter ego allegations, Bullion's purported belief
4 as to what events caused it to assert these allegations have no effect on the statute of limitations of
5 Bullion's substantive claims. Thus, while Bullion attempts to frame its substantive claims as being
6 based on purported new information, they simply are not. The only thing that has changed is that
7 Bullion has decided to assert to new frivolous allegations of alter ego in hopes to keep Barrick
8 Gold in this action. The substance of Bullion's lawsuit – that being the 1979 Agreement – is the
9 same and is not based on any new or previously unknown conduct.

10 **F. Bullion's "Constructive Trust Remedy" Should be Dismissed.**

11 The only party trying a "magic trick" is Bullion, who seeks to have its own allegations in
12 its complaint "disappear." After pointing out the fact that Bullion's Second Amended Complaint
13 seeks a constructive trust over the purported "royalties" allegedly due to Bullion under the
14 "1979 Agreement" (see Sec. Am. Comp., ¶¶ 68-70), which is a liability not subject to a
15 constructive trust under Nevada law, Bullion claims what it really meant by "royalties" is the
16 "mineral assets." (See Bullion's Opp'n 25:8-22.) To borrow Bullion's language, "[n]o matter how
17 many spells [Bullion] incants, [its very own allegations] will not disappear."

18 Bullion's complaint alleges that it is seeking a constructive trust over the "royalties"
19 purportedly due, not the "mineral assets."¹¹ Long-settled Nevada law on this issue is clear that
20 payments (i.e., royalties) purportedly due from "defendants" to Bullion are liabilities, which "do[]
21 not constitute property that may be subject to a constructive trust." *Danning v. Lum's, Inc.*,
22 86 Nev. 868, 871, 478 P.2d 166, 168 (1970). Had Bullion wanted a constructive trust of the
23 mineral assets, it should have alleged as much. It did not because that it not what it seeks nor has
24 ever sought. Bullion claims that notwithstanding the allegations in its own complaint, the
25 agreement purportedly permits Bullion "to take any monthly production royalty in kind." (See

26
27 ¹¹ Bullion also claims that a constructive trust "is an appropriate remedy to reach the assets
28 that have been spirited away from (or to) an alter ego." (See Bullion's Opp'n 25:24-26:4.) Bullion
fails to explain what "assets" have been spirited away, nor does its complaint include any such
allegations.

1 Bullion's Opp'n to Goldstrike & Exploration Mot., 3:27-4:2, on file, Aug. 22, 2020.) Of course,
2 Bullion fails to mention that under that provision Bullion must elect to do so by written notice.
3 Bullion has never elected and still has not elected to take any royalty in kind, even assuming it is
4 entitled to any royalty. Instead, as alleged in its complaint, it seeks the monetary royalty. A
5 constructive trust is precluded in this instance.

6 Bullion has also not plead *any* facts that would remotely establish a "confidential"
7 relationship between Bullion and Barrick Gold. In fact, there is absolutely no relationship
8 between Bullion and Barrick Gold, other than the fact that its subsidiaries apparently own land
9 that Bullion claims is subject to a purported mining royalty. Bullion's reliance upon *Mackintosh v.*
10 *Jack Matthews & Co.*, 109 Nev. 628, 855 P.2d 549 (1993), is unavailing. In *Mackintosh*, the
11 Nevada Supreme Court indicated that a "special" relationship may exist under the particular facts
12 of the case - the plaintiffs purchased property "as is" using a home loan from a defendant that was
13 both the lender and the seller. *Mackintosh*, 109 Nev. at 635, 855 P.2d at 554. Barrick Gold is
14 neither the "mine operator" nor the "accountant," as Bullion claims. Barrick Gold (nor any other
15 defendants for the matter) directly entered into the contract from which Bullion seeks a royalty,
16 and there is not an inkling of confidence or reliance necessary, particularly as it relates to Barrick
17 Gold.

18 III. CONCLUSION

19 Barrick Gold's is not a proper party to this action. There is no basis for jurisdiction over
20 Barrick Gold in this case. The subsidiaries that actually own the land and operate the mines subject
21 to Bullion's purported claims are defendants here and remain answerable to Bullion's claims in this
22 court.

23 DATED this 8th day of September, 2020.

24 PISANELLI BICE PLLC

25 By: /s/ James J. Pisanelli

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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 8th day of September, 2020, I filed a true and correct copy of the foregoing **REPLY IN SUPPORT OF BARRICK GOLD CORPORATION'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT** with the Clerk of the Court through the Court's CM/ECF system, which sent electronic notification to all registered users as follows:

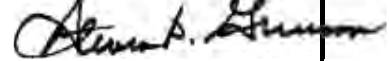
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

BULLION MONARCH MINING INC.,)
)
Plaintiff,)
)
vs.)
)
BARRICK GOLDSTRIKE MINES INC.,)
)
Defendant.)
)
AND RELATED PARTIES)

CASE NO. A-18-785913-B
DEPT NO. XI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE
TUESDAY, SEPTEMBER 22, 2020

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

**DEFENDANT'S MOTION TO DISMISS BULLION MONARCH
MINING, INC.'S CLAIMS FOR CONSTRUCTIVE
TRUST AND ALTER EGO**

**BARRICK NEVADA HOLDING LLC'S MOTION TO
DISMISS PLAINTIFF'S SECOND AMENDED
COMPLAINT**

**NEVADA GOLD MINE'S MOTION TO DISMISS,
JOINDER TO MOTION TO DISMISS, AND
MOTION FOR A MORE DEFINITE STATEMENT**

**STATUS CHECK: STIPULATION OR WHETHER A
SUPPLEMENTAL RULE 16 CONFERENCE IS TO BE
SET**

SEE NEXT PAGE FOR APPEARANCES

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

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BARRICK GOLDSTRIKE, AND
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ASHLEY C. NIKKEL, ESQ.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, SEPTEMBER 22, 2020, 9:58 A.M.**

2 * * * * *

3 THE COURT: All right. Good morning. Bullion.

4 MR. POLSENBERG: Good morning, Your Honor.

5 MR. PISANELLI: Good morning, Your Honor.

6 THE COURT: Who wants to start?

7 Mr. Pisanelli? Ms. Spinelli?

8 MR. PISANELLI: I'd be happy -- I'd be happy to, Your
9 Honor. Can you hear me okay?

10 THE COURT: I can hear you just fine. Thank you.

11 MR. PISANELLI: Great. Thanks.

12 So just to be clear, Your Honor, I will be arguing,
13 if it works for you, in this order: The Barrick Gold and
14 Barrick Nevada Holdings motion. I'll argue them in essence
15 together.

16 THE COURT: Okay.

17 MR. PISANELLI: And I will leave some of the overlap
18 arguments for my cocounsel to argue in relation to Goldstrike,
19 Exploration and NGM. So rather than be duplicative, we'll just
20 join in those arguments made following my own. I don't know if
21 you want to do all of our arguments first and then the other
22 side, but in any event, I won't be touching upon all of the
23 arguments that overlap. We will just join one another's
24 argument.

25 THE COURT: I would like all of your four motions to

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1 be argued first before I go over to Polsenberg.

2 MR. PISANELLI: Okay. That makes sense to me too.

3 So, Your Honor, starting with the Barrick Gold and
4 Barrick Holdings motions to dismiss and going through all of
5 the papers, it just struck me that there's no really unique
6 issues of law here that we all haven't argued before you and
7 that Your Honor doesn't have to handle on, and I won't say a
8 routine basis, but certainly frequently.

9 What's unique about this debate, from our
10 perspective, I think, is that I'm hard-pressed to think of
11 another case where we've had a plaintiff prosecute, then
12 dismiss a party because of jurisdictional defect and then come
13 back over a decade later with the same claims and the same
14 jurisdictional defects and act as if no harm, no foul. And so
15 that's part of, I think, one of the important facts you have to
16 keep in mind here as we move forward.

17 Another unique thing about this debate that's telling
18 is, and important to what we're doing, is that I don't know
19 that I have seen so much energy put into alternative theories
20 like the agency and alter ego --

21 THE COURT: So you've never seen Polsenberg argue
22 jury instructions, have you?

23 MR. PISANELLI: Yeah, well, here's --

24 THE COURT: That's what I feel like.

25 MR. PISANELLI: That's funny.

1 But here's the difference, right. Here we're --
2 we've got all of this energy put into the alternative theory
3 for these new parties when there is no need for any of it
4 because the plaintiffs are adequately protected. It is their
5 complaint that they had framed as being based upon a contract
6 they say that runs with the land, and anyone who touches that
7 land and benefits from that land is subject to the burdens that
8 they say flow from their contract. Well, they have all of
9 those parties at the table. And there's nothing in the record
10 because there's nothing that exists to suggest that there's a
11 corporate shell game or that somehow at the end of the day this
12 plaintiff or these plaintiffs would be left holding the bag.

13 So, you know, again, I'm left wondering what is
14 this -- all this energy about. It feels like harassment. It
15 feels like leverage, but their motivation really doesn't matter
16 for our purposes. The only thing that matters is that the law
17 doesn't permit tactics like this, and it doesn't permit tactics
18 like this, not because there's ill will or a [indiscernible]
19 motivation. It doesn't permit tactics like this because the
20 facts don't support in particular the jurisdictional arguments.
21 So let me start there.

22 I'm not going to go through all of the authority of
23 this before Your Honor. I'm sure we can all agree, again, you
24 deal with it more frequently than any of us combined, but a
25 couple of important points that I think we have to filter

1 everything we do through these two key facts. First of all --
2 or it should be the principal. First is that it is the
3 plaintiff's burden to fully insert to make a prima fascia
4 showing of personal jurisdiction. With that -- not just
5 allegations, not just lawyer arguments and hyperbole, but with
6 the actual evidence, and we see from all of this paper that's
7 been put in front of you is that Bullion's opposition through
8 their silence, more than anything else, shows that they don't
9 have any evidence to support their burden.

10 Instead, we have a lot of argument, some creative
11 writing, some reference to magical stuff that Bullion relies
12 entirely upon their own allegations for the complaint to tell
13 you, please leave these parts in here, notwithstanding the
14 evidentiary failures and, of course, the law doesn't permit
15 that. And the second principle I think we need to filter
16 everything through are the presumptions that govern this
17 analysis.

18 It sure felt in the -- in reading these briefs that
19 Bullion was doing their best to turn this burden on its head
20 and attack us for having not proven the defense into their
21 arguments, which, of course, that's not how it works. Even if
22 they are wrong because we did put the only evidence in the
23 record, and the fact of the matter is Nevada law is very clear
24 that corporate earnings are presumed to be separate. And so it
25 is not our burden to show the separateness, even though we did.

1 The Nevada Supreme Court in the Viega matter in particular made
2 clear that the presumption is even more important when dealing
3 with jurisdictional matters, and the subsidiaries' contacts are
4 only imputed, as Bouillon is trying to do here, under very
5 narrow exceptions, in particular for agency and the alter ego
6 theory.

7 So we saw in the, what feels like the umpteenth
8 amended pleading because we've gone back 10 years now, an
9 attempt to plead around the Viega problem by putting the
10 conclusory allegations about agency and alter theory -- alter
11 ego, which I'll address in a minute, but I think that the
12 conclusory allegations don't come close to what Nevada law
13 requires of a plaintiff under these circumstances.

14 So in looking at the jurisdictional standards, of
15 course, as in all of these debates, we have to look at either
16 general or specific jurisdiction; it felt from a review of
17 these pleadings that the general jurisdiction is not being
18 advocated or certainly not being advocated seriously, and you
19 can see why, right.

20 In order to establish general jurisdiction, Bullion
21 has to show that, you know, our client contacts are so
22 continuous and systematic as to render either of them at home
23 here in Nevada, and it is their system basis for an argument of
24 that, but there is no principal place of business here.
25 Barrick Gold, for instance, is organized in British Columbia.

1 Principal place of business in Toronto, no officers here, no
2 employees, offices, equipment, no operation, doesn't own any
3 land in Nevada, doesn't pay taxes in Nevada.

4 Barrick Holding is the same way. It's not at home in
5 Nevada. It's a Delaware corporation. No employees, offices,
6 equipment, same thing. And so we can't, instead of going
7 through the long list of things that don't exist, I think its
8 pretty clear that because we don't have anything to really
9 focus on what they claim does exist, it doesn't seem to be --
10 any real argument by general jurisdiction. They seem to be
11 focused at specific jurisdiction. So let's take, you know, a
12 quick look at that.

13 It's kind of -- I'm sorry. The plaintiffs have to
14 show here two prongs in order to establish [indiscernible] and
15 the first one is that our clients had purposely availed
16 themselves of the privileges of acting in Nevada and, most
17 importantly, I think, for our debate today, is that their cause
18 of actions arise from this purposeful contact. I think that's
19 key, and I'll get to that in a second.

20 We also have to keep, I think, and focus the
21 distractions that we see in the opposition which attempt to
22 focus on what the subsidiaries of our clients, Barrick Gold and
23 Barrick Nevada Holdings, that there's some distraction to look
24 at what their subsidiaries are doing, but that's not a proper
25 analysis, of course, for specific jurisdiction. We have to

1 look at what the parent was doing. And so in relation to
2 Barrick Gold, the only thing that I really see any focus on
3 from Bullion is this focus on the implementation agreement and
4 the subsequent limited liability agreement that was used to
5 form Nevada Gold Mines in 2019.

6 Now, it's interesting -- I'll call it a side note, to
7 say that after abandoning the jurisdictional argument for its
8 claims a decade ago, Bullion comes back to the Court with the
9 same claims, still claiming that they're due royalty from us
10 under different theories, but that the jurisdiction is tied to
11 something that happened two years ago in 2019. Claims from
12 N-plus years ago now they say are tied to the 2019
13 implementation agreement.

14 The point is this. It cannot possibly be the focus
15 of the specific jurisdiction analysis because those claims
16 could not have arisen from the implementation agreement, and I
17 think that is a fatal flaw to Bullion's attempt to kind of
18 hitch its wagon to this latest event and attempt to tell Your
19 Honor that, you know, there has been some shenanigans or some
20 corporate shell game here that now subjects us to jurisdiction,
21 and again, it has to be specific, and that just doesn't work
22 because of the timing of these rather stale claims.

23 As Your Honor can see from our papers, Nevada Gold
24 Mines is a subsidiary of Barrick Gold through a series of
25 others subsidiaries. So what we have is the conclusion that

1 just can't be avoided, that in light of the timing, in light of
2 the organizational structure and really the creation of Nevada
3 Gold Mines, that these claims against Barrick Gold are not tied
4 to the implementation agreement, and therefore, there is no
5 hook to bring Barrick Gold back into this jurisdiction. They
6 abandoned it 10 years ago, and nothing has changed.

7 It's interesting, Your Honor, because what we're
8 talking about in the implementation agreement and the limited
9 liability agreement, of course, is that they claim, Bullion
10 claims that Barrick Gold has its fingerprints on the Nevada
11 Gold Mines organizational structure. And by having its
12 fingerprints, notwithstanding, you know, that there's a whole
13 series of other intermediary companies, the subsidiaries, and
14 again Barrick Gold isn't even the 100 percent owner through its
15 different subsidiaries or other defendant Barrick Nevada
16 Holdings is under only 61 and a half percent. But because of
17 their fingerprints on the formation of NGM, Nevada Gold Mines,
18 that somehow under plaintiff's theory creates specific
19 jurisdiction. And we know that that just can't be under Nevada
20 law.

21 So the *Sonora* case that we've all briefed so much in
22 front of you just says that that is not the law. The Court
23 flatly rejected arguments that tried to recognize that merely
24 holding a company or having organizational input on
25 subsidiaries is not enough. And I'll quote:

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1 "Parent corporation's formation and
2 ownership of an independent subsidiary for
3 the purpose of conducting business in the
4 foreign state does not itself subject the
5 parent to jurisdiction in that state."

6 THE COURT: So, Mr. Pisanelli, can I stop you for a
7 second. Can I ask you a question. Because I --

8 MR. PISANELLI: Yes, you can.

9 THE COURT: Because I printed all of your appendices
10 yesterday and read them last night while I was trying to watch
11 the football game. So can you tell me if that's true, why your
12 clients agreed to the exclusive jurisdiction of the Courts of
13 the State of Nevada relating to the implementation agreement?

14 MR. PISANELLI: So our client being which one, the
15 parent Nevada Gold, or Barrick Nevada Holding, the actual owner
16 of 61 percent of the --

17 THE COURT: They both have signature lines on the
18 agreement on pages 231 of your appendix.

19 MR. PISANELLI: Sure. So, Your Honor, I would say,
20 respectfully, agreeing in a contract, as the *Sonora* Court said,
21 relating to the formation and ownership of a particular entity
22 that is going to do business in Nevada, that agreeing to the
23 terms of that contract, participating in a contract that was
24 formed -- that company that would come to Nevada to do
25 business, the contract itself, the process of the contract is

1 not enough to be -- to bring someone into Nevada.

2 And there's a whole myriad of reasons why the parties
3 would agree that Nevada law would govern or Nevada choice of
4 forum would cover. It doesn't mean that we are subjecting
5 ourselves here. It doesn't mean, most importantly, it doesn't
6 mean that there's any claims by Bullion that are flowing from
7 that contract.

8 For instance, if we were to have a debate with
9 Newmont over allocations or operations or any number of things,
10 maybe, maybe Newmont could raise the terms of that contract and
11 why the parties agreed, whether it be a trade-off, one point
12 for another -- it happens, you know, in all negotiations -- or
13 otherwise.

14 But if Newmont had standing to say we are not getting
15 the benefit of our bargain on the implementation agreement, all
16 right, that's a whole different debate because at a minimum
17 Newmont would have standing complaining about that agreement
18 that if claims are flowing from that agreement.

19 Here we have Bullion, a nonparty to the agreement,
20 claiming that there is specific jurisdiction because of a
21 choice of Nevada clause, where even if true the specific
22 jurisdiction analysis doesn't apply because nothing Bullion is
23 complaining about stems from the implementation agreement.
24 Their claims today, like they were 10 years ago, stem from an
25 old agreement that they say runs with the land, a 1979

1 agreement, and that everyone who has the land has an obligation
2 to pay royalty to them on mineral production. That's their
3 claim.

4 Whatever the organizational strategy was, whatever
5 the bargain for exchange between our client and Newmont, for
6 instance, were in connection with the implementation agreement,
7 that the consolidation of these assets and the absorption of
8 these liabilities has nothing to do with someone coming into
9 Nevada to do business, nothing, and certainly nothing to do
10 with this lawsuit or the claims that they've brought.

11 THE COURT: Okay. Sorry to have interrupted your
12 line of thought.

13 MR. PISANELLI: Oh, no, no, no.

14 So we know from -- you know, I've been focusing
15 mostly on Barrick Gold and the arguments that they have set
16 forth that the parent corporation's assistance or fingerprints
17 on the formation of NGM is not enough. And as I just quoted
18 that's what the *Sonora* Court says, Barrick Holdings similar,
19 but there's a subtle difference in the argument there. Nevada
20 Holding is a direct owner of Nevada Gold Mines, 61.5 percent.
21 And so that seems to be the hook of Bullion as it relates to
22 Barrick Holdings, that they say that this company and this
23 organizational structure and the merger of these companies and
24 their assets and absorption of their liabilities was created to
25 absorb Goldstrike's ownership in the Nevada properties. I

1 don't know where that comes from. It certainly -- you know,
2 that allegation certainly doesn't come from any evidence.

3 But what we do know is that Barrick Holdings doesn't
4 own any property in Nevada. It doesn't have any interest in
5 property in Nevada, and its sole business function was created
6 to do one thing, like so many different holding companies are;
7 it's created to hold and own the membership in NGM.

8 And again, our Court in the *McCulloch versus*
9 *O'Donnell* case said that that fact is not enough. Quote,

10 "The mere fact of stock ownership by one
11 corporation in another does not authorize
12 jurisdiction over the stockholder
13 corporation."

14 And it wouldn't, of course, under the analysis for
15 general jurisdiction or specific jurisdiction. Most
16 importantly on specific, there's nothing about its ownership
17 that is the foundation of Bullion's claims. Bullion's claims
18 are all about royalty coming from a contract that they say runs
19 with the land; that has nothing to do with ownership by one
20 entity over the other entity, NGM, that does have an interest
21 in the land.

22 Again, I think it's worthy of repeating. NGM is at
23 the table, and if they are owning and operating land that has a
24 contract they say that burdens that land, NGM is here. It's at
25 the table, so is Goldstrike, so is Exploration, the parties

1 that they claim to have owned it. When you're going up the
2 ladder as far as they have all the way up to Barrick Gold, but
3 even one step above for the 61 percent ownership of Barrick
4 Holding, they have nothing to do with the land. They don't own
5 the land, and therefore they're unrelated and detached from the
6 causes of action that Bullion has brought. That makes them,
7 again, not subject to jurisdiction here.

8 Let me spend a few moments now on the Viega decision
9 and how Bullion is attempting to plead around these problems.
10 Of course, you know, as I said a moment ago, the very narrow
11 exception of holding a parent corporation responsible for the
12 context of its subsidiary in the forum can only occur in alter
13 ego or agency theories.

14 So under the agency theories, Bullion again has made
15 no showing as it relates to Barrick Gold that it's the agent of
16 any of its subsidiaries, let alone flowing down to -- all the
17 way down to whether it be NGM or even Goldstrike for that
18 matter. It's just simply relying upon theory and its own
19 pleading, and that's simply not enough. The Viega Court set a
20 high standard in order to drag a parent company into a
21 jurisdiction under the agency theory. That control has to be,
22 the Court tells us, so pervasive that it has to effect -- in
23 effect have taken over the subsidiary in its day-to-day
24 operation.

25 And so, you know, I would ask Your Honor in all of

1 the stuff that you've read, has Bullion met its burden to
2 overcome the presumption of separateness to show not only that
3 Barrick Gold or even Barrick Nevada Holdings may or may not
4 have fingerprints on NGM or on Goldstrike, but have they shown
5 an agency relationship through evidence, through a prima facie
6 showing of evidence that these entities have contact and
7 control that is so pervasive? I mean, that's a high
8 standard -- so pervasive that they've taken over the day-to-day
9 operation? There is zero evidence of that.

10 All of the evidence, quite frankly, on this topic has
11 come from us, and it came from all of that jurisdictional
12 discovery that happened in the federal court cases. There's
13 declarations that show the separateness of these entities and
14 the Stringer declaration in particular.

15 So, you know, this is a very high burden on them to
16 show this agency theory, and they really have done little more
17 than just throw something out there as a hook that hopefully in
18 discovery on a fishing expedition they can start to find how,
19 you know, one conversation over management may have happened
20 over one email may have happened or whatever fishing they're
21 looking for, but they certainly don't have anything in this
22 record that talks about or shows or even suggests that the
23 context has been so pervasive that it's there for Your Honor to
24 find that Barrick Gold or Nevada Holdings, Barrick Nevada
25 Holdings has actually taken over the day-to-day operations of

1 either of these entities that actually own the property is just
2 not the case.

3 Excuse me.

4 THE COURT: It's okay. At least you don't have to
5 wear a mask like us here in the courtroom.

6 MR. PISANELLI: I know. I am thankful for that
7 actually. That my [indiscernible] would've been muffled.
8 Maybe that was a good thing.

9 UNIDENTIFIED SPEAKER: I wouldn't mind that, Judge.

10 THE COURT: You guys are funny.

11 UNIDENTIFIED SPEAKER: I was waiting for a chance to
12 pipe up on that.

13 MR. POLSENBERG: I was -- I was on mute.

14 MR. PISANELLI: They beat you to the punch.

15 THE COURT: All right. Mr. Pisanelli, let's wrap it
16 up.

17 MR. PISANELLI: All right. So a few words on alter
18 ego, and I'll wrap it up and turn it over to my cocounsel. So
19 alter ego is a very serious thing, Your Honor. It is something
20 that our high court tells us we have to proceed cautiously, and
21 the burden once again is high. It's not simply enough to plead
22 on a jurisdictional debate. It is Bullion's burden here to
23 make a prima fascia case through evidence to substantiate that
24 the corporation was influenced and governed by, here, our
25 clients, the alleged alter egos. They have to show through

1 prima -- actual evidence, a prima fascia case that there's such
2 a unity of interest, that one is inseparable from the other,
3 and they have to show, of course, an adherence to the corporate
4 fiction, would sanction a fraud or promote injustice.

5 Starting with that latter one, you know, as I've
6 said, these -- these claims all stem from a contract that runs
7 with the land. The parties running the land, the parties doing
8 the mining, the parties presumably taking in revenues are off
9 the table; there's no injustice.

10 The other one -- the other two elements about being
11 influenced, the record is devoid of anything like that. And
12 certainly the suggestion that these entities are inseparable
13 one from another, that there's -- there's nothing in the record
14 on that.

15 Now, we see all the time in debates before you and
16 Supreme Court opinions the catchphrase hallmarks. Hallmarks of
17 alter ego being the commingling of funds, undercapitalization,
18 diversion of funds, treatment of corporate assets and the
19 individuals as one and failure to observe corporate formality.
20 Where is that? There is evidence of none of those things.
21 Most important of which I would say is there's no evidence of
22 undercapitalization. That's something Your Honor I know always
23 takes serious in these debates because we wouldn't want to find
24 at the end of the day that one company was a shell; one company
25 had been looted and that they -- one company was just treating

1 the other as its personal piggy bank or a way to shield
2 liability without any actual operations going on. That's
3 simply not the case here. There's no evidence in the record
4 that anything of that sort has been going on. This is at best
5 hyperbole. Certainly there is -- there is no evidence about
6 it.

7 And the suggestion that, you know, our corporate
8 structure speaks for itself, that there must be some form of
9 alter ego because of the complexity of the corporate structure,
10 that's not a -- that's not a fair suggestion. When you take
11 even Bullion's own corporate structure into consideration, this
12 is no mom-and-pop operation. It's a subsidiary of global
13 mining conglomerates. Well, Eurasian Minerals, they're traded
14 on the Toronto Stock Exchange, New York Stock Exchange. They
15 operate all around the world as well, and they have, like us, a
16 complex corporate organizational structure that's of public
17 record, just like ours.

18 So the suggestion that we're -- it's a complicated
19 structure, and therefore there's wrongdoing is not a fair one.
20 It's not an accurate one, and it certainly doesn't carry the
21 day on strong allegations like this.

22 And with that, Your Honor, I would only say that, as
23 my final word before I pass on to my colleague, that the
24 concept of jurisdictional discovery is not an equitable one at
25 this point.

1 They've already had that opportunity in federal
2 court, and after doing it abandoned the claim for obvious
3 reasons because there was no jurisdiction for Barrick Gold, and
4 they did it again with a subsidiary of Barrick Gold for the ABX
5 Finance Company, conducted the discovery only to allow them out
6 of the case. And as I said a moment ago, you know, Barrick
7 Gold is publicly traded. It's transparent. There is a lot
8 that is already out there between the discovery they've
9 conducted and all of the public filings that it has to do.
10 There's no mystery left anymore that would require discovery.

11 So we would ask, Your Honor, at the absolute most or
12 the least depending on the perspective, I guess, is that these
13 cases, these claims be dismissed against Barrick Gold and
14 Barrick Holding. And for whatever reason, as this -- the case
15 about the actual merits against the actual defendants that hold
16 the land, they come back to Your Honor saying they've somehow
17 uncovered actual evidence that wasn't in the public record,
18 wasn't in the discovery they've already done, then we'll have
19 that debate then. But leaving these entities in feels, as I
20 said at the beginning, like a leverage play because there's no
21 reason for them to be here. There's no equitable reason.
22 There's no factual reason, and there's no legal reason, and we
23 ask that they be -- these claims be dismissed.

24 THE COURT: Thank you.

25 Next.

1 MR. KEALY: Thank you, Your Honor. Michael Kealy on
2 behalf of Barrick Goldstrike, Barrick Gold Exploration and
3 Nevada Gold Mines, LLC.

4 I'll first address the alter ego claim. We'll note
5 that Bullion concedes that the alter ego theory is a remedy,
6 and it's not a cause of action, but it's been pled as a cause
7 of action or a claim for relief. For this reason alone, it
8 should be dismissed because it was -- it's alleged as a
9 separate cause of action, and it was not alleged as a remedy.
10 It appears nowhere in Bullion's prayer for relief.

11 And just to state the obvious, Your Honor,
12 Rule 12B5 distinguishes between a claim and relief upon -- that
13 can be granted upon that claim. But the first thing is you
14 must have it as a claim. So if it's not recognized as a cause
15 of action or a claim for relief, then it should be dismissed as
16 pled improperly.

17 I will say that Bullion's offered justification is
18 that there's no harm, and I quote, there's no harm in alerting
19 the parties as to the theories that Bullion has for liability.
20 But their contention that there's no harm really is not a basis
21 for attempting to assert a remedy in the form of a cause of
22 action.

23 Even though it's a different context, the case of
24 *Callie versus Bowling* does state that a party wishing to assert
25 an alter ego claim must do so in an independent action against

1 the alleged alter ego. That was a case that involved a
2 judgment. They tried to add a party to the judgment, but the
3 Court said, no, that's inappropriate. Once you have a
4 judgment, you've established liability; you should proceed in a
5 separate, independent cause of action.

6 Now, we've taken the position, and we maintain that
7 Bullion has alleged its alter ego claim upon allegations of
8 fraud but that Bullion has failed to even satisfy Rule 9, NRCP
9 9B, which requires specificity.

10 In paragraph 81 of the Second Amended Complaint,
11 Bullion alleges that the facts are such that recognizing the
12 entity has separate (telephonic interference) of fraud. They
13 also say or promote injustice, because -- but they go further.
14 I know that that language appears in alter ego cases. It would
15 be unjust, inequitable if the sanctions of fraud or promotes
16 injustice. But they go further than just reciting that
17 language. They claim that assets are being -- or the benefits
18 of Goldstrike, obtained by Goldstrike in the 1979 agreement are
19 being diverted. They claim that the defendants are
20 manipulating the corporate structure to limited liability.

21 Now, like I said, they do mention injustice in its
22 complaint, but they try to use that fact to lower the standard
23 of pleading while they infuse their alter ego theory with fraud
24 contentions. They're trying to have it both ways, lower
25 pleading standard, but yet they get to plead fraud. How do we

1 know that? Bullion doubled down on its claims of fraud in
2 their reply to their own motion to amend the complaint. On
3 pages 2 and 3, they stated, and I quote, This fraud did not
4 become clear until 2019, the 2019 Nevada Gold Mines joint
5 venture. The joint venture was a, quote, game change that
6 peeled back the fraud that justifies an alter ego theory.

7 They also say that, The defendant's corporate shell
8 game makes the 2019 transaction a fraud that is inescapable.
9 So in addition to alleging it in the complaint, they say fraud,
10 the word fraud, and argue it three times in their briefing, but
11 they've argued that their claim does not sound in fraud. And
12 what I can say is, despite having used the word fraud four
13 times and coupling that with allegations of diversion,
14 manipulation, they now contend that it doesn't really sound
15 like fraud. Well, four mentions of the word fraud definitely
16 sounds like fraud to us, Your Honor.

17 Now, the Nevada Supreme Court has held that a
18 complaint is subject to Rule 9B, pleading requirements even
19 when the word fraud is not used. But the plaintiff -- if the
20 plaintiff effectively describes fraudulent conduct, then it
21 sounds in fraud. And clearly Bullion has done that. So there
22 is a heightened pleading requirement if they want to support
23 alter ego based upon fraud. And, of course, *Rocker versus*
24 *KM -- KPMG*, I'm sorry, sets forth that heightened pleading
25 standard and talks about the limited circumstances in which

1 discovery will be allowed to explore that.

2 So in this case, they're lacking the who. Bullion
3 alleges upon information and belief unspecified affiliates of
4 Goldstrike. They allege possible undisclosed parties. They
5 allege Barrick Gold subsidiaries, but without naming them, and
6 there's -- there's very many. As far as the what, they allege
7 acquisition of unspecified properties at unspecified times
8 despite the fact that there's public records, property records
9 and public disclosures due because these companies are public.

10 They also -- in describing the when, they used the
11 phrase both before and after 1999, which pretty much includes
12 the history of the world. So they haven't narrowed that down.

13 So it appears that Bullion's fraud contentions are
14 really a pretext for massive discovery, which they have already
15 launched, which essentially says we want everything from
16 everybody. And we proceeded as a substitute for having to
17 satisfy Chapter 112 of the Nevada Revised Statutes that deals
18 with fraudulent transfers because they don't have the evidence.

19 Bullion's complaint does not satisfy *Rocker* and the
20 exception -- and become an exception to the heightened pleading
21 standard because *Rocker* says that a relaxed pleading standard
22 is only allowed where facts are alleged supporting a strong
23 inference of fraud, and this is important, and the complaint
24 itself shows that Bullion could not plead with particularity
25 because the required information is uniquely in the possession

1 of the defendants. They make no such statement in their
2 complaint whatsoever. They argue it in the briefs after their
3 defective pleading has been pointed out, but they make no such
4 allegation in the complaint.

5 So their complaint, as drafted, that cause of action
6 should be dismissed, and I will tell you that they failed to do
7 that, the who, what, where, when and why despite the fact that
8 they've had a lot of discovery. There's been 23,000 pages of
9 discovery, some of which was jurisdictional, and they have
10 numerous depositions that are cited by Barrick Gold Corporation
11 in their briefing here regarding Goldstrike's management,
12 regarding the adequate capitalization, regarding the
13 governance, regarding the separateness, regarding the
14 distinctions between officers and directors, and their
15 independence.

16 So they also have had the benefit of the document
17 showing that the area of interest property that were held by
18 Goldstrike and Exploration were transferred to NGM. They've
19 also had the benefit of NGM saying if Goldstrike and
20 Exploration owed obligations to royalty holders on the day that
21 the joint venture was created, then they'd assume those
22 obligations. They've been provided with the documents that
23 demonstrate what the assumption of obligations has been, and
24 there has been no specific exception made relative to Bullion.

25 They've been given all the real property records

1 related to the joint venture transfer. They've been given
2 interrogatory answers by Goldstrike that it conveyed its
3 interest to NGM in those mineral properties.

4 All the related transfer documents were provided by
5 2019. The 423 page implementation agreement between Barrick
6 Gold and Newmont has been provided. The First Amendment
7 thereto has been provided. The LLC agreement has been
8 provided. So in addition to this, we've had regulatory filings
9 and requirements, and we've had a transaction between two
10 opposing mining companies that was supervised by management
11 shareholders and lawyers.

12 So all of that information, but for that which is
13 privileged has been supplied, and yet they don't mention a name
14 other than Rich Haddock. They don't mention a name in their
15 complaint. They don't mention any of that. They could have
16 studied it, and they could have supported -- better supported
17 their allegations if they had the facts, but if they have read
18 it, they know that the facts are not there, and they're not
19 favorable.

20 So more than a decade into this case, Bullion has
21 failed to allege what properties are at issue, when those
22 properties became burdened by their alleged royalty, how any
23 particular defendant other than Goldstrike and Exploration
24 became liable, which defendants are liable for what. And as we
25 know under Nevada law, lumping all defendants together is

1 improper and in the case, federal case in the Ninth Circuit of
2 Swartz versus KPMG.

3 So our position, Your Honor, is that Bullion has been
4 dilatory, and they have -- they have alleged this alter ego
5 based upon conclusory allegations, and they very much hope for
6 a massive fishing expedition such as they did in ABX, only much
7 larger, and we've seen already how that is [indiscernible].

8 Alternatively, Your Honor, on the alter ego theory, I
9 ask if you are not inclined to dismiss that claim as pled that
10 you, at a minimum, would require more definite statement out of
11 Bullion.

12 Now, I'd like to turn to the issue of constructive
13 trust. Just like alter ego theory, the constructive trust is a
14 remedy, and it is not a cause of action; again, Bullion
15 concedes this point. And because it's not a cause of action,
16 it should be dismissed in the way that it's been pled as a
17 claim for relief.

18 The explanation offered by a Bullion is that they
19 asserted it in an abundance of caution, but I will submit that
20 there is no law that renders a remedy to be a cause of action
21 because it was alleged out of an abundance of caution. So we
22 ask that it be dismissed on that basis alone.

23 Going further, we, on the substance of the
24 constructive trust claim, it does not -- Bullion's complaint,
25 the complaint itself, now they go further in their briefs, but

1 the complaint does not describe [indiscernible] upon which a
2 constructive trust can be imposed. The case is Danning versus
3 Lum together with Garteiz versus Garteiz says the constructive
4 trust can be established only by allegations of extrinsic fraud
5 pleaded with particularity and supported by clear and
6 convincing proof.

7 So Bullion's complaint alleges retention of royalty,
8 not mineral assets. It talks about payments of royalty being
9 owed. Those are damages. It says that retention of the
10 royalty is the inequity to Bullion. That's their allegation.
11 But a royalty as a liability is not a race. It's not a child.
12 It's not land. Not a chosen action. And Danning versus Lum
13 says it is impossible to make a race out of a liability or to
14 impose a trust thereon. That is precisely the case here.

15 Bullion attempts to cure that in its briefing, cure
16 the defective complaint in its opposition claiming that the
17 mineral assets are erased. But this does nothing to cure the
18 way that that has been pled.

19 They also attempt to claim that because of the
20 royalty liability gets paid from revenue that is derived from
21 mineral assets and such converts the liability to a race
22 because at one time it was an asset. But Danning V Lum renders
23 these types of gymnastics impossible.

24 I'd ask the Court to, as an analogy, consider if
25 Nevada Gold Mines were a car dealership and Bullion were a

1 commission salesperson. Now, in that scenario, Bullion, there
2 is a special relationship there as, say, employee to employer
3 and that the salesperson is terminated and claims that he's
4 entitled to 10 percent commission on the sales of a dozen cars
5 that are in order. Is the Court going to give that employee
6 salesperson a constructive trust against the cars? And is that
7 constructive trust going to be imposed against the parent
8 company of the car dealership and also the auto manufacturer
9 over in, say, Germany or Japan? No. Why? Because the
10 commission is -- it's a percentage of proceeds. It's a
11 liability. Just because that commission arises from the sale
12 of an asset doesn't mean that you create a raised purpose of a
13 constructive trust. It's an absurd argument.

14 So and in this case, Bullion doesn't have a special
15 relationship that the employee has with the car dealer. In
16 essence, Bullion seeks to impound a hundred percent of the cars
17 on the lot because they claim that they have a 1 percent
18 royalty on the mineral assets that have not yet become revenue
19 and have not yet become gross smelt or return. The fact is
20 there's no [indiscernible], and this Court should not allow
21 that cause of action to go forward.

22 Now, I will say as to the confidential relationship,
23 Bullion and Goldstrike -- that has been alleged -- Bullion and
24 Goldstrike, Nevada Gold Mines, they're each successors to
25 parties who entered into an agreement in 1979. And whether or

1 not that royalty runs with the land is still -- it's still a
2 matter of debate.

3 But what is not a debate is that the agreement is an
4 arm-length transaction. It's these parties are contractual
5 parties to each other. They're not in a position of trust.
6 There's no special relationship such as an insurance company or
7 an insured or an employee or an employer. And Bullion
8 completely fails to plead any facts that can support a
9 confidential relationship with Goldstrike, Exploration or
10 Nevada Gold Mines. Only the conclusion is what they've offered
11 this Court. And again, they try to cure those defects through
12 motion practice.

13 Bullion does cite to several cases and in particular
14 pulls out McIntosh, but McIntosh is a case where it's not
15 comparable. When you have a bank that takes possession of a
16 piece of property, a bank-owned property, and they're also
17 going to serve as the lender, and they're aware of a defect in
18 the property, because they're the lender, not because they're
19 the seller, but because they're the lender combined with the
20 seller, they found a special relationship because why would a
21 bank lend money on a property that it knows is defective or has
22 mold or has water damage. So that is not this case. That is
23 not this case.

24 They're not comparable, and they haven't supplied
25 anything that suggests that there's this special relationship.

1 Oh, and, yes, we're not -- I don't concede that we're
2 a successor to the 1979 agreement. It's just been alleged. I
3 just -- I'm sorry if I misstated that.

4 With that, Your Honor, I would say that we ask that
5 the constructive trust claim for relief be dismissed. At a
6 minimum, if you're not inclined to dismiss it, we ask that
7 Bullion be required to submit a more definite statement, and we
8 take the position that really what Bullion is doing here is
9 they're seeking a prejudgment writ of attachment on a hundred
10 percent of the mineral assets without having to post a bond for
11 double the value thereof, and they should not be allowed to do
12 that.

13 Thank you, Your Honor.

14 THE COURT: Thank you.

15 Anyone else on behalf of the movants wish to speak?

16 (No audible response.)

17 THE COURT: All right. Mr. Polsenberg, you and your
18 team.

19 MR. SMITH: Thank you, Your Honor. This is Abe Smith
20 for Bullion. How much time would you like me to take, or
21 what's the maximum time you would like me to take?

22 THE COURT: Forty-five minutes, which is what
23 Mr. Pisanelli took, and his team.

24 MR. SMITH: Okay. All right. I think I should be
25 able to do that. Thank you, Your Honor.

1 Let me start with the -- well, let me start with
2 Barrick Gold and Barrick Nevada Holding LLC's motion on
3 personal jurisdiction. And if you have specific questions,
4 Your Honor, please interrupt me if you are more interested in
5 one argument versus another.

6 THE COURT: So before you start, let me get my two
7 questions out of the way.

8 MR. SMITH: Sure.

9 THE COURT: Why did you dismiss the Ninth Circuit
10 appeal?

11 MR. SMITH: So, Your Honor, we believe that we would
12 have prevailed in the Ninth Circuit in getting a remand back to
13 Judge [indiscernible]. Realistically speaking, I don't know
14 that Judge (video interference) would have reached a different
15 conclusion, and we'd be back in front of the Ninth Circuit in
16 another two to three years, and we'd be dragging this
17 litigation out longer than -- than it already has been.

18 We've made substantial progress in this case in State
19 court, which by the way I just want to address that we've been
20 accused of forum shopping. This was not our election. We
21 would have been perfectly happy in federal court had Barrick
22 Goldstrike not elected to -- to dismiss us on diversity
23 grounds. So we're here because we were forced to come here.
24 But now that we're here, we've made substantial progress. It
25 doesn't make sense to go back in front of the federal court for

1 years more of litigation on the diversity issue.

2 THE COURT: Okay. Let me go to my next question.

3 MR. POLSENBERG: It, Your Honor, this --

4 THE COURT: Wait. Let me go to my next question.

5 MR. POLSENBERG: This is Mr. Polsenberg.

6 THE COURT: The next question is --

7 MR. POLSENBERG: I'm not sure we all -- well, Judge,
8 if I can add to that answer, there's disagreement on our team
9 whether we would have prevailed in the Ninth Circuit.

10 THE COURT: Okay. So let me go to my next question.
11 The constructive trust allegation or remedy you are seeking,
12 you want me to impose a constructive trust on ore that is still
13 in the ground?

14 MR. SMITH: Or ore that has been taken out of the
15 ground. In fact, our in-kind royalty is according to
16 Section -- or paragraph 4E of the agreement. It states on the
17 extracted -- the extracted minerals. So it would be -- it's on
18 royalty on minerals that have been extracted.

19 THE COURT: No. What you're seeking to have me
20 impose a constructive trust on is the ore still in the ground
21 or just extracted ore?

22 MR. SMITH: Well, since we're not at this -- we're
23 not at this point seeking future damages. It would only be on
24 the ore that's been extracted, and that gold that Barrick has
25 in its possession or the proceeds from that.

1 THE COURT: Okay.

2 MR. SMITH: That's just -- just as [indiscernible]
3 that it can be either the ore or the -- it can be either the
4 ref, which is r-e-f, for the court reporter, or the --

5 THE COURT: We knew that.

6 MR. SMITH: -- or the proceeds from that -- from that
7 property, which in this case would be the proceeds from the
8 sale of any mineral assets.

9 THE COURT: All right.

10 MR. SMITH: Now, this isn't --

11 THE COURT: Now --

12 MR. SMITH: Yes.

13 THE COURT: Now, that's fine. I'm going to let you
14 go to your argument now, but make sure as part of your argument
15 you address the special relationship issue and the impact of
16 the joint venture agreement forum selection provision.

17 MR. SMITH: Very good, Your Honor. Let me
18 actually -- let me start with the -- in that case, let me start
19 with the constructive trust, and then I'll kind of work my way
20 backwards.

21 So I think it's a little disingenuous for -- for
22 Barrick Goldstrike and Barrick Exploration to say they didn't
23 know that our complaint was talking about the -- the minerals
24 simply because we referenced the mineral royalty as opposed to
25 the word minerals. I think it's clear that our royalty is

1 on -- is on minerals. In fact, the agreement which we attached
2 to our complaint makes clear that the definition of payment
3 also includes payment in kind. So this idea that payment
4 somehow only means dollar damages is not accurate according to
5 our complaint and according to the agreement that's attached to
6 the complaint.

7 And for that same reason, we are talking about a ref,
8 which is -- which are those minerals not simply a liability. I
9 get accused a lot of my creative writing. And what we hear
10 when we talk about magic tricks, this is all in reference to my
11 description of how Barrick has reframed the argument on
12 constructive trust to be -- as being that plaintiffs allege
13 that you are owed something via constructive trust. Then that
14 becomes a liability and, poof, the ref disappears, and now it's
15 not available for constructive trust. So that's just in case
16 anybody was wondering that inside joke.

17 THE COURT: I got it because I read it.

18 MR. SMITH: The special relationship, I think
19 actually here we have a couple special relationships. One,
20 this is not like the car dealership where the -- where the
21 employee had some kind of interest in commissions, but no right
22 to specific cars themselves. Here we have a right to the
23 minerals themselves, and what makes the -- what makes this a
24 special relationship akin to the McIntosh case is that we are
25 at the whim of Barrick in terms of an accounting of the mineral

1 assets.

2 In other words, our -- Bullion's royalty is limited
3 to a 1 percent gross monthly return royalty within a specified
4 area of interest. So we have the area of interest, but Barrick
5 did not limit it in its production to the area of interest. So
6 it has -- it has mining operations within the area of interest.
7 It has mining operations outside the area of interest, and we
8 rely on Barrick to give us an accounting of how much ore was
9 recovered from the area of interest versus how much we've
10 recovered outside the area of interest. And for that we are
11 owed.

12 They are in a position of superior information. We
13 can't go into that double check whether they were appropriately
14 located a particular ore to -- to the area of interest versus
15 outside the area of interest. In fact, obviously I'm not
16 accusing them of misconduct, but there would be an incentive to
17 make the -- make the production outside the area of interest as
18 great as possible in the production within the area of interest
19 as little as possible. So I think that does raise the same
20 kind of special relationship that we found in these other
21 cases.

22 But in addition, we're also a partner to the original
23 joint venture agreement, the 1979 agreement. Although we
24 aren't entitled to share in the revenues of the agreements that
25 the other partners to that agreement are, we are entitled to

1 our royalty, and I think that also puts us in a position of a
2 special relationship vis-à-vis the members of that -- of that
3 joint venture. And as Mr. Kealy says he does not admit, but
4 our obligation is that Barrick Goldstrike and the other
5 defendants are successors to the parties to that original 1979
6 agreement.

7 And while we're on the subject of Barrick Goldstrike
8 and Barrick Exploration motion, let me just briefly address the
9 issue of the heightened pleading. We've cited to cases that
10 say that no -- alleging alter ego or corporate veil piercing
11 does not require a heightened standard. It's just the normal
12 Rule 8 notice pleading standard.

13 In their reply brief, Barrick cites the *Tabeeo* case,
14 *T-a-b-e-e-o*, versus *Tabeeo* and says, well, what they're -- the
15 Court required more -- more specificity, but actually there are
16 two sections to that case. The first section is talking about
17 the heightened pleading standard, and the corporate veil
18 piercing was expressly not one of the allegations that was
19 subject to Rule 9 type of pleading standard.

20 Separately, they did allege the alter ego claims, and
21 there was not a discussion of the Rule 9 standard. There was a
22 request for specificity. But then in a separate case *Hall*
23 versus *High Desert Recycling*, which defendants also cite, that
24 requirement with specificity is a fairly low bar. It's not the
25 particularity standard of Rule 9. In fact, the Court describes

1 what will meet that standard.

2 So, for example, on the element of control, as long
3 as the plaintiff alleges that the defendant has exercised
4 complete dominion -- dominance and control over defendants
5 (telephonic interference). So it's not all of the details that
6 the defendants are asking for here. But regardless, we in our
7 briefs and in our past briefs we outlined in detail how we
8 actually have alleged alter ego with particularity.

9 I'm going to address the specifics of the alter ego
10 allegation maybe in a minute unless the Court wants to hear
11 about it now more in the context of the personal jurisdiction
12 issue. So if Your Honor doesn't mind, I will turn to that now.

13 THE COURT: Okay.

14 MR. SMITH: All right. So Mr. Pisanelli is right; we
15 are talking about specific jurisdiction, which means that some
16 of the cases that are cited to oppose this Court exercising
17 jurisdiction, which are general jurisdiction cases, aren't
18 really all that helpful because we're talking about a defendant
19 that doesn't have -- that doesn't have contacts related to or
20 arising out of the lawsuit, but they're just trying to find a
21 hook on a defendant that just has contacts generally, and so
22 they're attempting a higher bar of general jurisdiction.

23 Here we do have specific personal jurisdiction, and I
24 think we have it just on the act of Barrick Gold Corporation
25 and Barrick Nevada Holdings, LLC, [indiscernible]. So their

1 own purposeful availment, their own contacts with Nevada are
2 sufficient to allow the Court to exercise jurisdiction over
3 them. If this Court disagrees, I would be happy to go into
4 more detail about the agency and alter ego theories, but I
5 think it's clear just from -- just from what those two
6 defendants have done on their own that there's jurisdiction.

7 I'm really glad that Mr. Pisanelli brought up the
8 *Sonora* -- *Sonora* Mining case. And, in fact, he doesn't really
9 go too much into the analysis in that case of the purposeful
10 availment of the mining companies own contacts. He likes the
11 language that talked about the agency theory or the alter ego
12 theory. But in that case, there actually was an extensive
13 discussion about how a company can establish its own contacts,
14 its own minimum contacts for purposes of personal jurisdiction
15 and what suffices to -- to render that corporation liable in --
16 in another jurisdiction.

17 So what's purposeful availment? In order to find for
18 them the connection of the cause of action sued upon with the
19 act supporting the exercise of jurisdiction, and then it gives
20 an example in a case Northern Gas versus Superior Court. That
21 was -- it's the parent company whose jurisdiction is at issue.
22 If the parent enters into a contract or a partnership with a
23 California entity -- that was a California case -- on the
24 subsidiary's behalf, then that -- then that is enough to
25 subject that parent to jurisdiction in California. And there

1 it was important that the parent company was not a signatory to
2 the contract to the joint venture agreement with the -- or to
3 the contract with the district, the school district in that
4 case.

5 But if we go back to the cases and set aside the
6 Northern -- the Northern Gas -- sorry, Northern Natural Gas
7 case and then future cases, we have *Allphin*, A-l-l-p-h-i-n,
8 *versus Peter K. Fitness*. I guess that's his middle name. You
9 actually find that -- the Court finds that, yeah, if you
10 have -- if a company, quote, was engaged in a joint venture
11 with another entity, and that other entity engaged in action in
12 furtherance of the joint venture that purposely availed it --
13 in that case California as the forum -- that would permit the
14 Court consistent with due process to exercise jurisdiction.

15 That's exactly what we have here. This isn't Barrick
16 Gold's forming a subsidiary and then later allowing or the
17 subsidiary goes out on its own to go form a joint venture with
18 Newmont in Nevada. This is Barrick Gold itself forming a joint
19 venture, to -- and I'm quoting now from page 88 of -- of the
20 Barrick Nevada Holdings attendant to own, manage and operate
21 the Barrick properties and the Newmont properties as a single
22 [indiscernible] that it's a property in Nevada. And you have
23 multiple cases showing that any [indiscernible] venture, any
24 member of which directs activity towards the one in furtherance
25 of the joint venture of that, that's enough to subject all of

1 the members to jurisdiction.

2 And now that we've talked about the forum selection
3 (video interference), yeah, this is not an unrelated contract.
4 Mr. Pisanelli talked about how Bullion was not a signatory to
5 the contract. Well, first that's irrelevant when it comes to
6 the reasonableness of exercising jurisdiction because Barrick
7 has clearly indicated that it is not an unreasonable burden for
8 it to come to Nevada to defend a lawsuit. But more
9 importantly, when it comes to this particular lawsuit, it
10 doesn't matter that Barrick -- that Bullion isn't -- isn't
11 Newmont that's [indiscernible] breach of the agreement. It's
12 Bullion, which is the beneficiary of the agreement, as
13 Mr. Kealy very helpfully said.

14 Nevada Gold Mines has admitted that if there's an
15 obligation that existed on the date that the property was
16 transferred from Barrick Goldstrike to Nevada Gold Mines, then
17 Nevada Gold Mines would assume that obligation referring to
18 documents where Nevada Gold Mines is created in this joint
19 venture agreement. So that's exactly what we have here. We
20 have Nevada Gold Mines assuming the liability, according to
21 their own papers, assuming the liability whatever they might be
22 [indiscernible] Barrick Goldstrike. So, yes, the Bullion is
23 the beneficiary then of the agreement in which the -- where
24 that [indiscernible] appears.

25 But I don't think we necessarily need that foreign

1 collection clause to get jurisdiction over -- over Barrick Gold
2 or Barrick Nevada Holding, LLC because it's enough that they
3 entered a joint venture with respect to -- with respect to
4 companies operating in Nevada with respect to the transfer of
5 Nevada property.

6 All right. Let me address -- I'm sorry. One more
7 point about the -- about the joint venture agreement. So it is
8 true that Bullion did not -- was not invited to sign the joint
9 venture agreement. As I stated, they were beneficiaries. But
10 it's also important that we're talking about the transfer of
11 property. This was in Bullion's area of interest. It affects
12 Bullion's royalty. To say that we're not -- that Bullion has
13 no claims arising from this agreement or that Bullion
14 [indiscernible] somehow unrelated to this agreement, that's
15 simply not true.

16 [Indiscernible] to -- to the last point, which is,
17 okay, so how does there -- how does Bullion -- how did Bullion
18 claims arise from these transactions? Well, it's important to
19 distinguish between the action in 2009 and the state of affairs
20 in July of 2019. These are not the same claims. Although
21 Barrick -- although Bullion has the same royalty stemming from
22 the 1979 agreement, in 2009 it did not appear to be the case
23 that anyone other than Barrick Goldstrike had any property in
24 the area of interest, and there also wasn't, or at least did
25 not appear to be an alter ego issue because it seemed that the

1 entity who had assumed the obligation to pay Bullion's royalty
2 was also the same entity that Barrick had owning in mining the
3 properties in the area of interest. So it wasn't necessary at
4 that point to involve Barrick Gold Corporation because there
5 didn't seem to be an indication of alter ego or of another
6 Barrick entity operating within the area of interest to avoid
7 having to pay Bullion's royalty. That changed.

8 That changed first in -- shortly before we filed the
9 State court lawsuit when we discovered that there indeed were
10 other Barrick entities, including Barrick Gold Exploration,
11 that did have stakes in the area of interest, but had not
12 alerted Bullion and were not paying Bullion's royalty.

13 And that became -- that became especially clear, and
14 this is why (telephonic interference) the case arises out of
15 the joint venture agreement, but became especially clear when
16 Barrick Gold enters into a new agreement with mining or with
17 Newmont Mining, and now wants to shift all of Barrick
18 Goldstrike's property to a new entity, Nevada Gold Mines, and
19 it also created a separate -- a separate entity within Barrick,
20 which by the way we don't know how much of a stake Barrick
21 Goldstrike has in that. We don't know who all of the owners
22 are. We haven't been told.

23 We were just told that -- that there's a series of
24 subsidiaries, but we don't know who owns Nevada -- Barrick
25 Nevada Holding, LLC and in what percentages, and it's unclear

1 what stake Goldstrike has in that new venture so that we would
2 be able to satisfy an obligation to Bullion.

3 So let me discuss now -- so that -- so really this is
4 all on the minimum contacts that Barrick Gold and Barrick
5 Nevada Holding, LLC have done themselves. So as you pointed
6 out, Your Honor, in fact, I think you were pointing to the
7 unsigned version of the joint venture agreement on page 359 of
8 their appendix is the signed version that has the signature
9 line for Barrick Gold and for Barrick Nevada Holding, LLC.

10 So these are -- these are their own -- these are
11 their own actions directed at Nevada. They have purposely
12 availed themselves of this forum, and it's certainly fair,
13 given their own selection of Nevada to govern the joint venture
14 agreement, it's certainly fair to hail them into court here.

15 But let me turn briefly to the alter ego and the
16 agency (telephonic interference) because those are independent
17 theories of jurisdiction, and for that we don't need any
18 contact, direct contact between the parent in Nevada. We just
19 need the actions of the subsidiary and then the kind of
20 relationship between the parent and the subsidiary.

21 So on the agency theory, let me clarify one point.
22 Our allegation is not that Barrick Gold is an agent of Barrick
23 Goldstrike or another Barrick entity. It's that Barrick Gold
24 Corporation is the principal directing its subsidiary, and we
25 see that in the joint venture agreement itself and the

1 implementation agreement. I think it's -- they cite the Viega
2 case, which of course they're the plaintiffs, the homeowners
3 association, and the lower court was really focusing on the
4 general jurisdiction theory, and the Court does address the
5 specific jurisdiction in the context of an agency theory. But
6 when we're talking about the pervasive control, it's not -- it
7 does not have to be pervasive control with respect to all of
8 the subsidiaries' activities.

9 Its pervasive control with respect to the activity
10 that -- the specific activity that constitutes the contact with
11 the forum such that it's fair to attribute that contact in that
12 specific jurisdiction contact -- specific contact to the
13 parent. So for the purpose -- for our purposes, it's enough
14 that we're alleging that in the act of directing Barrick
15 Goldstrike and its other subsidiaries to sell all of their
16 property and even outlining the form of the deed and promising
17 Newmont that, yes, we will do this. We will direct our
18 subsidiaries to do these specific actions. We'll even tell
19 them how to draft a branch deed, and they -- and an energy deed
20 so that all of these rights are effectively passed from our
21 subsidiaries to you.

22 In that specific context, it is acting as a principal
23 and is using its subsidiaries, its agent to fulfill that
24 specific role. Those actions were taken in Nevada, and those
25 actions are properly attributed to Barrick Gold as the

1 principal corporation.

2 Alter ego is broader, and so it's something that
3 Mr. Pisanelli drafted as a higher burden, but then the -- the
4 contacts, all of the contacts then of the subsidiary are
5 attributed to the parent because the corporate board has been
6 abused, and so it's proper for the Court to disregard the
7 corporate form in evaluating the minimum contacts of the -- of
8 the parent corporation.

9 So let me explain how this case differs, I think,
10 from the usual case of a parent subsidiary. This isn't like
11 Viega. This isn't like *Sonora Mining* where you have a
12 subsidiary with whom the plaintiff has conducted business the
13 whole time, and then when it comes time for a judgment, or
14 rather when it comes time for payment, it turns out the
15 subsidiary is undercapitalized, and then so we try to look to
16 another source of revenue.

17 Although there is that risk in this case,
18 particularly since as I've said it's unclear how much of a
19 stake if any -- or it's unclear how much of a stake Goldstrike
20 has in Nevada Gold Mines' revenue. It's not clear that it's
21 going to have [indiscernible] in the future, particularly with
22 respect to past damages, because even if Barrick Goldstrike is
23 getting some kind of percentage of a future stream of revenue,
24 Bullion has a substantial claim for past damages, and Barrick
25 has now apparently shifted everything off to Nevada Gold Mines.

1 So it's unclear whether it would actually be able to satisfy
2 judgment.

3 But that is not just that. It's not just the issue
4 of the subsidiary that can't satisfy obligations as we've
5 described, and this is the fraud and injustice that results
6 from this case. It's the issue of Barrick setting up separate
7 entities to do something that Goldstrike could not do on its
8 own without being exposed to liability by Bullion. So it -- if
9 Barrick -- if Barrick Goldstrike were on its own to go out and
10 acquire new land in the area of interest, it would just as on
11 its current land; it would be those production in those lands
12 would be subject to Bullion's royalty. It is an injustice that
13 just because Barrick is able to set up a new corporate entity
14 that it should be able to escape the royalty that it owes to
15 Bullion within the area of interest.

16 Now, we've talked -- we've heard about plaintiff's
17 theory that well, you know, Bullion says that the entity -- the
18 royalty runs with the land. We do believe that the royalty
19 runs with the land. But just because it runs with the land
20 doesn't mean that Barrick is not going to make the argument
21 that because these are separate entities that have not entered
22 into the same agreement as Barrick Goldstrike and have not
23 assumed the obligations of Goldstrike that they are -- that
24 they are therefore not subject to the royalty.

25 If they were willing to waive that argument, then --

1 then I think -- because I think this would be an easier case
2 because then we could just go directly against all of the --
3 all of the entities that own land in the area of interest.

4 And let me compare this to a hypothetical noncompete
5 agreement. So if I were to leave a job and I had acquired
6 substantial trade secrets, and I'm told I can't compete with my
7 former employer in a 25-mile radius, and then I were to go and
8 set up Abe, a Nevada Holding, LLC and say, well, now I'm going
9 to conduct business through a holding Nevada, LLC, and I'm
10 going to use those trade secrets, but I -- I myself am not
11 going to put my name on any business. It's just going to be
12 Abe's Nevada Holding, LLC, that uses those trade secrets.
13 There may not be an issue of undercapitalization if I'm able to
14 fund that entity, but that's not a -- that's not a
15 [indiscernible], that they need in the noncompete obligations
16 which I've agreed.

17 So it's the same issue here. We've got a company
18 that has agreed to pay Bullion's royalty but because it's
19 enmeshed within the corporate structure, it's able to solicit
20 other entities and say, hey, we -- we'll have this other entity
21 mined within the area of interest, and thereby they haven't
22 paid Bullion's bargained-for royalty.

23 All right. Is Your Honor interested in the statute
24 of limitations argument at all?

25 THE COURT: Not today.

1 MR. SMITH: Not today. Okay. Good. Neither am I.
2 Does Your Honor have any more questions?

3 THE COURT: No. All of the questions to the
4 Polsenberg team I have already raised with you.

5 MR. SMITH: Very good.

6 THE COURT: Did you have anything else you wanted to
7 say before I go back to Mr. Pisanelli and Mr. Kealy?

8 MR. SMITH: No, thank you, Your Honor.

9 THE COURT: All right. Mr. Pisanelli, you and your
10 team.

11 MR. PISANELLI: Thank you, Your Honor.

12 You know, one word, if you don't mind, about the
13 statute of limitations issue. Counsel said that they're not
14 seeking future damages today, but what he didn't say because he
15 can't say it is that he didn't -- his clients anyway -- didn't
16 seek future damages 10 years ago when it sued Barrick Gold for
17 the first time, and that's the key to our argument.

18 And the difference, I know you've already addressed
19 this in other motions so I won't spend a lot of time on it,
20 Your Honor, but the difference as it relates to Barrick Gold is
21 Barrick Gold was at the table in federal court. Barrick Gold
22 was the party that was the subject of the discovery and the
23 analysis on a claim that they brought for dec relief that would
24 have addressed their future right. They chose then 10 years
25 ago to accelerate that claim as a matter of law, and therefore,

1 they were on the clock when they dismissed us. And they chose
2 to let a decade pass, and, therefore, the statute of
3 limitations.

4 While Your Honor has ruled I know as it applies to
5 other parties, I think Barrick Gold is in a unique position
6 having already litigated against Bullion once on this
7 accelerated claim.

8 Now, if I am understanding counsel --

9 MR. SMITH: I'm sorry. Mr. Pisanelli, would you mind
10 if I address that?

11 THE COURT: No. Please don't. Please don't
12 interrupt.

13 MR. SMITH: Okay.

14 THE COURT: Mr. Pisanelli, please finish.

15 MR. SMITH: Thank you.

16 MR. PISANELLI: Thank you, Your Honor.

17 I had, quite frankly, a difficult time following the
18 argument on the contacts. But if I understood counsel
19 correctly, he appeared to be saying that Barrick Gold and
20 Barrick Holding have their own independent contract -- contacts
21 with the State of Nevada, and that justified subjecting them to
22 jurisdiction. Now, that would have been consistent with
23 counsel's first concession, which I appreciated his frankness,
24 and that is that they are seeking a specific jurisdiction
25 analysis here because he argues on the one hand that this joint

1 venture concept on cases from California, notably not from
2 Nevada, are enough if you're in a joint venture and that joint
3 venture unrelated, I think he's saying, to what your client's
4 going to do is never going to step foot in Nevada, et cetera,
5 but it entered into a joint venture that was going to go in the
6 jurisdiction. That would be enough.

7 Well, that sounds like a general jurisdiction
8 analysis. It's not Nevada law to begin with since we know
9 there's an article specifically rejected that concept when it
10 said a parent corporation's formation and ownership of the
11 independent subsidiary for the purpose of conducting in the
12 foreign state. That's the exact scenario counsel just
13 described as the joint venture. *Sonora* Court specifically said
14 that is not enough in Nevada, and I think having been cited by
15 the *Viega* Court, I think it's important to keep that in mind.

16 So the joint venture issue at best under California
17 law might support the general jurisdiction, but it doesn't
18 support the specific jurisdiction. Now, in order to get around
19 that, counsel suggests, okay, we are a specific jurisdiction,
20 and while you did enter into this contract, you then tried to
21 take this square peg and cram it into the round hole by saying
22 that their claims actually stemmed from the implementation
23 agreement, and that cannot possibly be because the same claims
24 that they are prosecuting against us now, that the ones arose
25 from the 1979 agreement are the same claims that they

1 prosecuted against us 10 years ago, which were seven or eight
2 years before the implementation agreement occurred, and I'm
3 quite confident that if pressed of whether their claims would
4 exist in the absence of the implementation agreement, counsel
5 would be very strong in his rejection of any such suggestion.

6 So, you know, at best the only thing he could say is
7 that our claims run with the land, and you entered into some
8 organizational agreement that touched upon the land; and
9 therefore, you're burdened by whatever burdened the land.
10 That's not a claim from the implementation agreement. That's a
11 claim as it's always been from the original 1979 agreement.

12 It's just a bridge too far to say that a joint
13 venture might get you general jurisdiction, but we're not
14 pursuing that here, and so we have to now say that because you
15 entered into this agreement and someone inside that agreement,
16 an entity would be formed that would go to Nevada. Everyone
17 whose fingerprints are on that contract would come into Nevada
18 for purposes of the specific jurisdiction even if the claim is
19 unrelated to that contract. That's the bridge too far.

20 The cases counsel cites, I'm willing to bet Your
21 Honor a dollar those cases are focused upon when the parties
22 themselves are arguing over the joint venture execution, the
23 joint venture rights that flowed from it, not simply any other
24 claim bringing one of those joint venture partners into the
25 jurisdiction. That's what they're trying to do here, that

1 Barrick Gold and Barrick Holdings have a signature line on that
2 contract, and now separate unrelated 10-year-old claims can be
3 prosecuted against them in Nevada. That's not what Nevada law
4 allows. That is the bridge too far.

5 On the alter ego theory, I heard some arguments
6 addressed about Goldstrike and how Goldstrike's interests now
7 are being, because I think they would argue, if I heard him
8 correctly, that if Goldstrike would have gone out and purchased
9 additional land in the area of interest, these plaintiffs would
10 have made a claim, but now because it's not Goldstrike, it's
11 now NGM that's making those claims, that somehow is the
12 attachment of alter ego.

13 Again, first of all, whether it be alter ego, whether
14 it be the joint venture analysis or agency, I will ask Your
15 Honor to note we didn't hear any citations to an actual
16 evidence to establish that they've met their prima fascia
17 burden on any of these claims because there isn't any. This is
18 all lawyer argument based upon allegations in their complaint.

19 But be that as it may, whether or not Nevada Gold
20 Mine is exempt from any rights that they claim still come from
21 the 1979 agreement is an issue that will be litigated in this
22 case. The proper parties are all at the table. It does not
23 mean that you can simply say that Nevada Goldstrike under
24 Nevada standards of what an alter ego is, and I don't intend to
25 argue my cocounsel's position, but I think it applies equally

1 to Barrick Gold, who they were personally silent about. It
2 just simply doesn't mean -- it cannot mean that there are alter
3 egos between two parties because contractual interests may or
4 may not have flowed from one party to the other. You don't get
5 an alter ego because you entered into a contract with somebody
6 else, and I think this concept about the noncompete misses its
7 mark for so many reasons, including the fact that noncompetes
8 are governed almost -- you take the over line public policy of
9 whether they were strictly construed or broadly construed, but
10 short of that, it's a contract right.

11 If you say that you as a person are not going to do
12 X, Y, Z, and you're not going to be able to get around me by
13 doing 1, 2, 3, 4, 5 or 6, then that's what the parties have
14 agreed to. But if they say, listen, you only worked here
15 because your name was important to me; it wasn't so much your
16 service, then I don't care if you have another entity that's in
17 the marketplace so long as the market doesn't make you or your
18 name is out there competing with me, but that's another
19 noncompete. So it doesn't apply under these circumstances.

20 But again, with no evidence, simply saying that
21 Goldstrike's contract rights and liabilities went to another
22 party, therefore those parties are one and the same for alter
23 ego liability just goes too far. And that, Your Honor, was all
24 argued in connection with Goldstrike. Note that you didn't
25 hear nor did you ever read how Barrick Gold or Barrick Holding

1 would be subject to that same analysis because they don't own
2 any property. So the alter ego falls completely flat when you
3 go all the way up the stream as they've done against the two
4 clients I'm arguing on behalf of.

5 The same argument or same defects, I should say, in
6 connection with the agency theory. Counsel says that Barrick
7 is not the agent, but it's the principal that's directing the
8 subsidiary because it entered into the one contract. Not one
9 contract we know under *Sonora* is not enough. Because the
10 standard on Viega is that the control has to be so pervasive as
11 to one party being -- having taken over the day-to-day
12 operation can counsel seriously argue that the one contract,
13 the implementation agreement that set forth this organizational
14 structure created a relationship that made Barrick Gold or
15 Barrick Holdings control over NGM so pervasive that they're
16 taking over the day-to-day operations, an entity, by the way,
17 that none of them, certainly not Barrick Gold because it's so
18 far up the stream, but even Barrick Holding, with a direct hold
19 owner of NGM is only a 61 percent owner.

20 So we have a complete failure on the agency issue to
21 meet the Nevada standard of a pervasive interaction with one
22 party to the other. It doesn't matter which is the principal
23 and which is the agent. The connection has to be so pervasive
24 that the one is controlling the day-to-day operation of the
25 other, and nothing about this presentation, not in the papers,

1 nor in oral argument and certainly nothing in evidence, the
2 record in this case supports that theory.

3 So again, we would ask Your Honor that these claims
4 against Barrick Gold and Barrick Holding be dismissed.

5 THE COURT: Thank you.

6 Mr. Kealy.

7 MR. KEALY: Thank you, Your Honor.

8 The first issue I'd like to address is the issue of
9 the in-kind property election. So if Bullion has a right to
10 elect to take in-kind payment, in kind by a taking the
11 processed minerals itself, first, Bullion has not demonstrated
12 that paragraph 4 applies to the area of interest, and the
13 federal court was unable to make that determination that was
14 sought on summary judgment, and the Court was unable to do that
15 and ruled that the contract was ambiguous in that regard.

16 I will note that there's a difference, and, of
17 course, paragraph 4 of the agreement that provides for the
18 in-kind option only pertains to this subject property. It only
19 deals with the subject property in paragraph 4. Now, Bullion,
20 there is a difference between the subject property and the area
21 of interest because Bullion is given the right to a paying
22 quitclaim deeds to the subject property if after 45 days of a
23 default notice that they haven't been paid their royalty that
24 they can go get those properties. But that does not exist as
25 to the area of interest.

1 So lastly on that issue, Bullion has not elected to
2 receive in-kind distributions. They must do so in writing.
3 They have to provide written notice, and, of course, they're
4 not going to do that because once they do that, they're not --
5 they would, even if we were liable on the royalty, they would
6 never get any money. They would have to go through that whole
7 process themselves. But nevertheless, because they have the
8 option, they believe they have the option, whether or not it
9 applies to the area of interest is a matter of undetermined
10 matter. They believe that they have that option to -- to have
11 a constructive trust on a hundred percent of those returns
12 rather than -- on the production rather than just 1 percent.
13 But because they have not elected, Your Honor, I think that
14 that is a significant fact that they're not seeking payment in
15 kind. There should not be a constructive trust imposed upon
16 that basis.

17 I will mention one thing as an editorial to
18 Mr. Pisanelli's comments, and that is that on the issue of
19 jurisdiction, Bullion sued Barrick Gold Corporation six months
20 before the implementation agreement existed. So that
21 implementation agreement cannot be the jurisdictional effect.
22 I'll just leave it at that.

23 The other argument that I would like to address just
24 very briefly, and that is that the alter ego theory is
25 determined relative to the complaint and only for purposes of

1 the facts alleged in the complaint. Well, that's breaking new
2 ground, new law. There's no law to support that. The whole
3 concept of alter ego is is that one entity or one person is the
4 same as the other. When you're dealing with one, you're
5 dealing with the other, same identity and that the separate
6 identities are a fiction, and that's certainly not true in this
7 case, but it's either all or none. Either you're an alter ego
8 or you're not. It's not limited to the particular allegations
9 within a complaint. Otherwise you'd have companies out there
10 that in one case they're an alter ego, and in the other case
11 they aren't.

12 But we know that if Nevada Gold Mines were held to be
13 the alter ego of some of these other defendants, that we would
14 hear plaintiffs claiming that that collaterally estops us from
15 relitigating it even though it was in a difference contact.

16 So the alter ego theory, we either have to be the
17 alter ego or not. It can't be surgically defined within the
18 limited confines of a complaint. Thank you, Your Honor.

19 THE COURT: Thank you.

20 The statute of limitations was not accelerated by the
21 prior litigation. I previously ruled on the statute of
22 limitations issue, and there are some factual issues we will
23 address further on in this case, but we are not there yet.

24 Here, if royalties are owed, Bullion is a beneficiary
25 under the joint venture agreement because of the geographic

1 area covered by the joint venture agreement.

2 The moving defendants did more than merely be an
3 owner of NGM. They effectuated the processes to create the
4 joint venture agreement and the entity that would be the joint
5 venture agreement and implemented the items necessary for the
6 joint venture agreement to be effective.

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

10 There is a special relationship that has been
11 properly alleged at this time as the allegation that there is
12 no way for the plaintiff to monitor the basis for the
13 calculation of the royalty if it is owed. However, the
14 defendants who have moved are correct on the issues related to
15 alter ego and constructive trusts. These are not separate
16 causes of action. Alter ego is premature at this time. It may
17 become a more relevant issue if NGM and Barrick Goldstrike do
18 not have assets to satisfy a judgment ultimately in this case,
19 and then we will have a discussion about that.

20 With respect to the constructive trust, I am
21 rejecting that as a cause of action. The plaintiffs have leave
22 to amend to add the constructive trust into their prayer, and
23 they must better allege the fraudulent acts complained of in
24 the current version of the complaint against the individual
25 defendants. You cannot group the defendants as a group under

1 Rule 9 for pleading purposes.

2 Anybody have any questions before we hang up?

3 MR. PISANELLI: Your Honor, Jim Pisanelli.

4 Go ahead.

5 THE COURT: Go first.

6 MR. PISANELLI: Go ahead.

7 MR. SMITH: Well, go ahead, Mr. Pisanelli.

8 MR. PISANELLI: On the jurisdiction issue, Your
9 Honor, I think, well, no, I'm certain I follow your logic and
10 your analysis. The only question I have is to the extent that
11 it matters for some future debate.

12 Are you finding that under these circumstances the
13 role of Barrick Gold and Barrick Holding in connection with the
14 creation of NGM created general jurisdiction in Nevada or
15 specific as it relates to these claims?

16 THE COURT: Specific as it relates to these claims
17 and the purposeful availment related to these actions in
18 establishing and forming the joint venture.

19 MR. PISANELLI: Okay. Thank you. That's all I had.

20 THE COURT: Unless you want to have a Sands Jacobs
21 discussion with me about the offices and everything and where
22 the conference calls happen.

23 MR. PISANELLI: Yeah, I had rather not do that.

24 THE COURT: Yeah, let's not do that today.

25 All right. Were there any more questions?

1 MR. SMITH: Your Honor, who would you like to prepare
2 the order?

3 THE COURT: I want Mr. Polsenberg's team to prepare
4 the order.

5 MR. POLSENBERG: Very good, Your Honor.

6 THE COURT: And I want them to send it to you to make
7 sure it's okay. I would really appreciate it if you guys
8 negotiated. If you can't negotiate it, I will take Word
9 versions from each of you.

10 MR. POLSENBERG: I'm not sure I heard half of that
11 last sentence.

12 THE COURT: That's because I have a mask on, and it's
13 really hard to communicate in a mask with a microphone.

14 I would like you to agree on the order after
15 Polsenberg sends it to you. If you are unable to agree on the
16 order, I would like each of you to send a Word version of your
17 proposed order to my law clerk so she can send them to me.

18 MR. POLSENBERG: Very good, Your Honor. Thank you,
19 Your Honor.

20 THE COURT: So let me ask a couple of questions. I
21 see the next thing on our calendar is a resumption of
22 settlement conference with Judge Denton. I need to schedule a
23 Rule 16 conference with you. Would you like me to set it
24 before or after your settlement conference with Judge Denton?

25 MR. POLSENBERG: Probably before, but we have not

1 been very making very much progress even with Judge Denton.

2 THE COURT: So can I set it -- can I set it for
3 October 19th? We're doing them by phone because of the
4 issues we have with the public health emergency.

5 MR. POLSENBERG: That's good for me. I haven't
6 talked to Clay.

7 THE COURT: How about you guys see if the October
8 19th --

9 UNIDENTIFIED SPEAKER: I'm checking right now, Dan.

10 THE COURT: How about you guys see if it works, and
11 you email Dan and tell him one way or the other.

12 MR. POLSENBERG: Very good. Thank you, Your Honor.

13 MS. SPINELLI: Your Honor, this is Debbie Spinelli --

14 THE COURT: Ms. Spinelli, how are you?

15 MS. SPINELLI: -- at 9:00 o'clock.

16 I'm good. How are you?

17 THE COURT: I'm just delightful. Thanks. All right.
18 What?

19 MS. SPINELLI: It seems so weird not to have seen
20 your face in so long.

21 THE COURT: Yeah, I have a mask on. Ask Todd and
22 Jordan.

23 MS. SPINELLI: I was trying to figure out some of
24 your expressions, and I can't do it --

25 THE COURT: Yeah, I know. It doesn't work.

1 MS. SPINELLI: -- kind of hard for me.

2 THE COURT: Yeah.

3 MR. POLSENBERG: No, I can still figure out the
4 facial expressions.

5 THE COURT: Uh-huh. Okay.

6 What else, Ms. Spinelli?

7 MS. SPINELLI: I know that the morning of the 19th I
8 may have a couple of substantive arguments in front of Judge
9 Denton at 9:00 o'clock. Would your Rule 16 conference be some
10 time other than the normal 9:00 o'clock calendar?

11 THE COURT: They typically are on the 9:00 o'clock
12 calendar, but I would wait for -- oh, I can't because I have to
13 share with arraignment court now. So I only get my courtroom
14 until 10:00 o'clock on every day except Tuesday. So if you
15 have a hearing with Judge Denton that day, then we'll pick a
16 different day. Will the next week work, October 26th?

17 MS. SPINELLI: Right now, yes, it does.

18 THE COURT: Why don't you all check with your teams
19 to see if October 26 works. If it does, email Dan. If it
20 doesn't, email Dan and let him know. We'll pick a different
21 day.

22 Thank you.

23 MR. SMITH: Thank you, Your Honor.

24 THE COURT: And I really want to compliment you all
25 on the briefing. I haven't gone through this much paper in

1 a -- on a real business court case in a long time,
2 Mr. Pisanelli and Mr. Polsenberg. So thank you to your teams.
3 They did great work in the briefing and the organization of the
4 appendices.

5 Be well.

6 ATTORNEYS: Thank you, Your Honor.

7 THE COURT: We'll be in recess again.

8 (Proceedings concluded at 11:36 a.m.)
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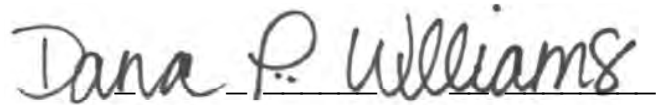
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

DANA L. WILLIAMS
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink that reads "Dana L. Williams". The signature is written in a cursive style and is positioned above a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

09/27/2020

DATE

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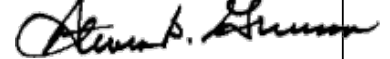
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7/13 7/15 7/17 9/22 10/3 13/7 13/8 13/23 15/9 16/6 16/13 17/1 18/6 18/6 18/12 18/23 20/12 20/13 20/19 20/23 24/9 28/23 30/4 36/20 42/18 42/20 44/10 44/10 44/10 45/18 45/20 47/21 53/9 53/17 54/19 56/3 58/13 59/15 60/12 60/15 60/16 60/17</p> <p>they [134]</p> <p>they'd [1] 25/21</p> <p>they're [27] 9/9 15/5 16/20 19/13 22/24 24/2 26/18 29/24 30/5 30/16 30/17 30/18 30/18 30/19 30/24 31/9 37/14 38/20 38/22 45/2 49/13 52/25 55/15 57/3 57/4 57/14 58/10</p> <p>they've [15] 13/10 16/8 20/1 20/8 20/16 20/18 23/11 25/8 25/18 25/22 25/25 26/1 30/10 53/16 55/3</p> <p>thing [11] 4/17 5/16 8/6 9/2 14/6 17/8 17/19 21/13 52/6 57/17 61/21</p> <p>things [3] 8/7 12/9 18/20</p> <p>think [35] 4/10 4/10 4/15 5/25 6/15 7/11 8/7 8/17 8/18 8/20 9/17 14/22 31/24 34/21 34/25 35/18 36/19 37/1 38/24 39/5 41/25 44/6 45/1 46/9 48/1 48/1 50/5 51/3 51/14 51/15 53/7 53/25 54/6 57/13</p>	<p>60/9</p> <p>this [105]</p> <p>those [24] 3/20 5/9 9/15 18/20 25/21 26/3 26/21 28/9 30/11 35/8 39/5 44/16 45/24 45/24 47/11 47/11 48/10 48/12 52/21 52/24 53/11 54/22 56/24 57/11</p> <p>though [3] 6/25 21/23 58/15</p> <p>thought [1] 13/12</p> <p>three [2] 23/10 32/16</p> <p>through [16] 4/4 5/22 6/1 6/7 6/16 8/7 9/24 10/14 16/5 16/5 17/23 17/25 30/11 48/9 57/6 63/25</p> <p>throw [1] 16/17</p> <p>tied [3] 9/10 9/12 10/3</p> <p>time [14] 18/15 28/22 31/20 31/21 46/13 46/13 46/14 49/17 49/19 50/17 59/11 59/16 63/10 64/1</p> <p>times [3] 23/10 23/13 24/7</p> <p>timing [2] 9/22 10/1</p> <p>today [6] 8/17 12/24 48/25 49/1 49/14 60/24</p> <p>Todd [1] 62/21</p> <p>together [3] 3/15 26/25 28/3</p> <p>told [3] 43/22 43/23 48/6</p> <p>too [6] 4/2 39/9 52/12 52/19 53/4 54/23</p> <p>took [1] 31/23</p> <p>topic [1] 16/10</p> <p>Toronto [2] 8/1 19/14</p> <p>touched [1] 52/8</p> <p>touches [1] 5/6</p> <p>touching [1] 3/22</p> <p>towards [1] 40/24</p> <p>trade [4] 12/11 48/6 48/10 48/12</p> <p>trade-off [1] 12/11</p> <p>traded [2] 19/13 20/7</p> <p>TRAN [1] 1/1</p> <p>transaction [3] 23/8 26/9 30/4</p> <p>transactions [1] 42/18</p> <p>TRANSCRIBED [1] 1/25</p> <p>TRANSCRIBER [1] 65/16</p> <p>TRANSCRIPT [3] 1/8 65/3 65/9</p> <p>transfer [4] 26/1 26/4 42/4 42/10</p> <p>transferred [2] 25/18 41/16</p> <p>transfers [1] 24/18</p> <p>transparent [1] 20/7</p> <p>treating [1] 18/25</p> <p>treatment [1] 18/18</p> <p>tricks [1] 35/10</p> <p>tried [3] 10/23 22/2</p>
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<p>T</p> <p>tried... [1] 51/20</p> <p>true [5] 11/11 12/21 42/8 42/15 58/6</p> <p>trust [23] 1/15 27/13 27/13 27/24 28/2 28/4 28/14 29/6 29/7 29/13 30/5 31/5 33/11 33/12 33/20 34/19 35/12 35/13 35/15 57/11 57/15 59/20 59/22</p> <p>trusts [1] 59/15</p> <p>try [3] 22/22 30/11 46/15</p> <p>trying [6] 7/4 11/10 22/24 38/20 52/25 62/23</p> <p>TUESDAY [2] 1/12 63/14</p> <p>turn [5] 6/19 17/18 27/12 38/12 44/15</p> <p>turns [1] 46/14</p> <p>two [11] 6/1 8/14 9/11 18/10 26/9 32/6 32/16 37/16 39/5 54/3 55/3</p> <p>type [1] 37/19</p> <p>types [1] 28/23</p> <p>typically [1] 63/11</p> <hr/> <p>U</p> <p>Uh [1] 63/5</p> <p>Uh-huh [1] 63/5</p> <p>ultimately [1] 59/18</p> <p>umpteenth [1] 7/7</p> <p>unable [3] 56/13 56/14 61/15</p> <p>unclear [4] 43/25 46/18 46/19 47/1</p> <p>uncovered [1] 20/17</p> <p>under [17] 7/4 7/13 9/10 10/16 10/18 10/19 14/14 15/14 15/21 26/25 51/16 53/23 54/19 55/9 58/25 59/25 60/12</p> <p>undercapitalization [3] 18/17 18/22 48/13</p> <p>undercapitalized [1] 46/15</p> <p>understanding [1] 50/8</p> <p>understood [1] 50/18</p> <p>undetermined [1] 57/9</p> <p>undisclosed [1] 24/4</p> <p>unique [4] 4/5 4/9 4/17 50/5</p> <p>uniquely [1] 24/25</p> <p>unity [1] 18/2</p> <p>unjust [1] 22/15</p> <p>unless [2] 38/10 60/20</p> <p>unreasonable [2] 41/7 59/8</p> <p>unrelated [6] 15/5 41/3 42/14 51/3 52/19 53/2</p> <p>unsigned [1] 44/7</p> <p>unspecified [3] 24/3 24/7 24/7</p> <p>until [2] 23/4 63/14</p>	<p>up [12] 15/1 15/2 17/12 17/16 17/18 39/7 47/6 47/13 48/8 55/3 55/18 60/2</p> <p>upon [16] 3/22 5/5 6/12 15/18 21/12 21/13 22/7 23/23 24/3 27/5 28/1 39/18 52/8 52/21 53/18 57/15</p> <p>us [17] 5/24 6/20 9/9 9/20 15/22 16/11 17/5 17/20 19/15 23/16 32/22 36/8 37/1 50/1 51/24 52/1 58/14</p> <p>use [2] 22/22 48/10</p> <p>used [4] 9/4 23/12 23/19 24/10</p> <p>uses [1] 48/12</p> <p>using [1] 45/23</p> <p>usual [1] 46/10</p> <hr/> <p>V</p> <p>value [1] 31/11</p> <p>VEGAS [2] 3/1 65/12</p> <p>veil [2] 37/10 37/17</p> <p>venture [41] 23/5 23/5 25/21 26/1 34/16 36/23 37/3 40/2 40/10 40/12 40/17 40/19 40/23 40/25 41/19 42/3 42/7 42/9 43/15 44/1 44/7 44/13 44/25 51/1 51/2 51/3 51/5 51/13 51/16 52/13 52/22 52/23 52/24 53/14 58/25 59/1 59/4 59/5 59/6 59/7 60/18</p> <p>version [4] 44/7 44/8 59/24 61/16</p> <p>versions [1] 61/9</p> <p>versus [14] 14/8 21/24 23/23 27/2 28/2 28/3 28/12 32/5 36/9 36/14 37/14 37/23 39/20 40/8</p> <p>very [17] 6/23 7/4 15/10 16/15 17/19 24/6 27/5 34/17 41/13 49/5 52/5 57/24 61/5 61/18 62/1 62/1 62/12</p> <p>via [1] 35/13</p> <p>video [2] 32/14 41/3</p> <p>Viega [8] 7/1 7/9 15/8 15/19 45/1 46/11 51/15 55/10</p> <p>vis [2] 37/2 37/2</p> <p>vis-à-vis [1] 37/2</p> <p>VISUAL [1] 65/4</p> <hr/> <p>W</p> <p>wagon [1] 9/18</p> <p>wait [2] 33/4 63/12</p> <p>waiting [1] 17/11</p> <p>waive [1] 47/25</p> <p>want [10] 3/21 18/23 23/22 24/15 32/19 33/12 60/20 61/3 61/6 63/24</p> <p>wanted [1] 49/6</p> <p>wants [3] 3/6 38/10</p>	<p>43/17</p> <p>was [58] 6/19 9/1 9/4 11/10 11/23 13/4 13/24 14/5 17/8 17/11 17/13 17/13 17/24 18/24 18/25 20/3 21/8 21/9 22/1 23/5 25/9 25/21 26/10 27/21 28/22 32/20 34/23 35/16 36/8 37/18 37/18 37/21 37/21 39/12 39/21 39/23 40/1 40/1 40/10 41/4 41/15 42/8 42/11 43/2 45/3 49/21 49/22 49/22 51/5 54/15 54/23 56/13 56/13 56/14 56/15 58/15 58/20 62/23</p> <p>wasn't [5] 20/17 20/18 42/24 43/3 54/15</p> <p>watch [1] 11/10</p> <p>water [1] 30/22</p> <p>way [14] 8/4 15/2 15/17 19/1 27/16 28/18 32/7 32/19 34/19 43/20 55/3 55/16 59/12 62/11</p> <p>ways [1] 22/24</p> <p>we [109]</p> <p>we'd [2] 32/15 32/16</p> <p>we'll [8] 3/19 20/18 21/4 45/18 48/20 63/15 63/20 64/7</p> <p>we're [19] 4/18 5/1 10/7 19/18 31/1 31/1 32/23 32/24 33/22 33/22 36/22 37/7 38/18 42/10 42/12 45/6 45/14 52/13 62/3</p> <p>we've [18] 4/11 5/2 7/8 10/21 22/6 26/8 26/9 27/7 32/18 32/19 32/24 36/9 37/9 41/2 47/4 47/16 47/16 48/17</p> <p>wear [1] 17/5</p> <p>week [1] 63/16</p> <p>weird [1] 62/19</p> <p>well [18] 4/23 5/8 19/13 19/15 23/15 32/1 33/7 33/22 37/14 41/5 42/18 47/17 48/8 51/7 58/1 60/7 60/9 64/5</p> <p>went [1] 54/21</p> <p>were [27] 12/8 12/24 13/6 25/17 25/18 26/4 28/25 28/25 32/23 36/13 42/9 43/9 43/12 43/23 44/6 45/24 47/9 47/25 48/5 48/7 50/1 52/1 54/1 54/9 57/5 58/12 60/25</p> <p>what [43] 4/18 4/24 5/13 7/7 7/12 8/9 8/22 8/24 9/1 9/25 10/7 13/18 14/3 23/12 24/6 25/7 25/23 26/21 26/24 30/3 30/10 31/8 31/22 33/19 35/9 35/23 35/23 37/14 38/1 39/5 39/15 40/15 41/19 43/25 44/1</p>	<p>49/14 51/3 52/25 53/3 53/24 54/13 62/18 63/6</p> <p>what's [3] 4/9 31/21 39/17</p> <p>whatever [6] 13/4 13/4 16/20 20/14 41/21 52/9</p> <p>whatsoever [1] 25/2</p> <p>when [23] 5/3 7/2 15/1 19/10 23/19 24/10 25/7 26/21 30/15 35/10 41/5 41/9 43/9 43/15 45/6 46/13 46/14 49/16 50/1 51/9 52/21 55/2 58/4</p> <p>where [13] 4/11 12/21 14/1 18/20 24/22 25/7 30/14 35/20 35/20 41/18 41/23 46/11 60/21</p> <p>whether [13] 1/20 12/11 15/17 29/25 33/9 36/13 47/1 52/3 53/13 53/13 53/19 54/9 57/8</p> <p>which [35] 6/21 7/11 8/21 11/14 18/21 22/9 23/25 24/11 24/14 24/15 25/9 26/12 26/24 28/1 31/22 32/19 34/4 34/7 35/1 35/8 35/8 37/23 38/15 38/17 40/24 41/12 41/23 42/16 43/20 45/2 48/16 50/23 52/1 55/22 55/23</p> <p>while [5] 11/10 22/23 37/7 50/4 51/20</p> <p>whim [1] 35/25</p> <p>who [12] 3/6 5/6 13/1 24/2 25/7 29/25 43/1 43/21 43/24 54/1 59/14 61/1</p> <p>whole [6] 10/12 12/2 12/16 46/13 57/6 58/2</p> <p>whom [1] 46/12</p> <p>whose [2] 39/21 52/17</p> <p>why [10] 7/19 11/11 12/2 12/11 25/7 29/9 30/20 32/9 43/14 63/18</p> <p>will [21] 3/12 3/17 3/23 5/18 21/17 24/1 25/6 27/19 29/22 38/1 38/12 45/17 45/17 53/14 53/21 56/16 57/17 58/22 59/19 61/8 63/16</p> <p>WILLIAMS [2] 65/12 65/16</p> <p>willing [2] 47/25 52/20</p> <p>wish [1] 31/15</p> <p>wishing [1] 21/24</p> <p>within [10] 36/3 36/6 36/18 43/6 43/19 47/15 48/19 48/21 58/9 58/17</p> <p>without [4] 19/2 24/5 31/10 47/8</p> <p>won't [3] 3/22 4/7 49/19</p> <p>wondering [2] 5/13 35/16</p> <p>word [9] 19/23 23/10 23/12 23/15 23/19 34/25 49/12 61/8 61/16</p>	<p>words [2] 17/17 36/2</p> <p>work [5] 9/21 34/19 62/25 63/16 64/3</p> <p>worked [1] 54/14</p> <p>works [4] 3/13 6/21 62/10 63/19</p> <p>world [2] 19/15 24/12</p> <p>worthy [1] 14/22</p> <p>would [64] 3/25 5/12 11/19 11/24 12/3 12/3 12/4 12/17 15/25 18/4 18/21 19/22 20/10 20/11 22/14 27/10 30/20 31/4 31/20 31/21 32/11 32/14 32/21 33/9 33/17 33/23 34/7 36/16 39/3 40/13 41/17 44/1 47/1 47/10 47/11 47/12 48/1 49/23 50/9 50/22 51/6 52/3 52/5 52/16 52/16 52/17 53/7 53/8 53/9 55/1 56/3 57/5 57/5 57/6 57/23 58/13 59/4 61/1 61/7 61/14 61/16 61/23 63/9 63/12</p> <p>would've [1] 17/7</p> <p>wouldn't [3] 14/14 17/9 18/23</p> <p>wrap [2] 17/15 17/18</p> <p>writ [1] 31/9</p> <p>writing [3] 6/11 35/9 57/2</p> <p>written [1] 57/3</p> <p>wrong [1] 6/22</p> <p>wrongdoing [1] 19/19</p> <hr/> <p>X</p> <p>XI [1] 1/6</p> <hr/> <p>Y</p> <p>yeah [8] 4/23 40/9 41/3 60/23 60/24 62/21 62/25 63/2</p> <p>year [1] 53/2</p> <p>years [11] 7/8 9/11 9/12 10/6 12/24 32/16 33/1 49/16 49/24 52/1 52/2</p> <p>yes [6] 11/8 31/1 34/12 41/22 45/17 63/17</p> <p>yesterday [1] 11/10</p> <p>yet [5] 22/25 26/13 29/18 29/19 58/23</p> <p>York [1] 19/14</p> <p>you [133]</p> <p>you'd [1] 58/9</p> <p>you're [10] 15/1 31/6 33/19 51/2 52/9 54/12 58/4 58/4 58/7 58/8</p> <p>you've [4] 4/21 16/1 22/4 49/18</p> <p>your [79]</p> <hr/> <p>Z</p> <p>zero [1] 16/9</p>
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DISTRICT COURT

CLARK COUNTY, NEVADA

BULLION MONARCH MINING, INC.,

Plaintiff,

v.

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

Defendants.

Case No.: A-18-785913-B

Dept. No.: XI

**NOTICE OF ENTRY OF ORDER
REGARDING MOTIONS TO DISMISS
AND MOTION FOR A MORE DEFINITE
STATEMENT**

Date of Hearing: September 22, 2020

Time of Hearing: 9:00 a.m.

PLEASE TAKE NOTICE that an "Order Regarding Motions to Dismiss and Motion for a More Definite Statement" was entered in the above-captioned matter on November 19, 2020, a true and correct copy of which is attached hereto.

DATED this 9th day of December, 2020.

PISANELLI BICE PLLC

By: /s/ Debra L. Spinelli

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Attorneys for Barrick Gold Corporation

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Pisanelli Bice PLLC, and that on the 9th day of December, 2020, I filed a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** via the Court's CM/ECF system, which sent electronic notification to all registered users:

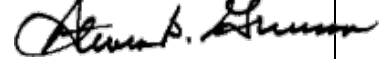
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DISTRICT COURT
CLARK COUNTY, NEVADA

BULLION MONARCH MINING,
INC.,

Plaintiff,

vs.

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

Defendants.

Case No. A-18-785913-B

Dep't No. ● XI

**ORDER REGARDING MOTIONS TO
DISMISS AND MOTION FOR A MORE
DEFINITE STATEMENT**

Hearing Date: September 22, 2020
Hearing Time: 9:00 a.m.

On September 22, 2020, this Court heard four motions: "Barrick Gold Corporation's Motion to Dismiss Plaintiff's Second Amended Complaint," filed July 28, 2020; "Barrick Nevada Holding LLC's Motion to Dismiss Plaintiff's Second Amended Complaint," filed August 6, 2020; defendant Barrick Goldstrike

1 Mines, Inc.'s and defendant Barrick Gold Exploration Inc.'s "Motion to Dismiss
2 Bullion Monarch Mining, Inc.'s Claims for Constructive Trust and Alter Ego,"
3 filed July 28, 2020; and "Nevada Gold Mine[s]' Motion to Dismiss, Joinder to
4 Goldstrike and Exploration's Motion to Dismiss, and Motion for a More Definite
5 Statement," filed August 6, 2020. Having considered the briefs, oral argument,
6 and the record before the Court, the Court finds and orders as follows:

7 1. The Court denies Barrick Gold Corporation's motion on the statute
8 of limitations. Although Barrick Gold Corporation asserts that the statute of
9 limitations has run on Bullion's claims, this Court previously ruled on the stat-
10 ute of limitations and held that the statute was not accelerated by the prior liti-
11 gation. The Court reincorporates its prior finding that the doctrine of continu-
12 ing breach applies to Bullion's claims. There may be factual issues to address
13 later in the case, but they are not properly presented at this stage.

14 2. This Court also denies the motions as they relate to personal juris-
15 diction. On March 10, 2019, Barrick Gold Corporation and Newmont Mining
16 Corporation entered into an implementation agreement regarding the for-
17 mation of a joint venture.

18 3. On July 1, 2019, Barrick Gold Corporation, Barrick Nevada Holding
19 LLC, Newmont Goldcorp Corporation (formerly Newmont Mining Corporation),
20 Newmont USA Limited, and Nevada Gold Mines LLC entered into an Amended
21 and Restated Limited Liability Company Agreement of Nevada Gold Mines
22 LLC.

23 4. The joint venture agreement creating Nevada Gold Mines LLC in-
24 cludes mineral claims Bullion has previously alleged were included within the
25 area of interest in the 1979 joint venture agreement under which Bullion claims
26 royalties.

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

1 the joint venture agreement.

2 6. The moving defendants did more than merely be an owner of Ne-
3 vada Gold Mines. They effectuated the processes to create the joint venture
4 agreement and the entity that would be the joint venture, and implemented the
5 items necessary for the joint venture agreement to be effective. Bullions claims
6 arise in part from these agreements to which Bullion is a beneficiary.

7 7. Barrick Gold Corporation and Barrick Nevada Holding LLC have
8 therefore purposefully availed themselves of a Nevada forum so as to subject
9 them to specific personal jurisdiction.

10 8. In addition, the forum-selection clause in the joint venture agree-
11 ment shows that it is not unreasonable for the Court to exercise its jurisdiction
12 in this case.

13 9. There is a special relationship that has been properly alleged at this
14 time as the allegation that there is no way for the plaintiff to monitor the basis
15 for the calculation of the royalty if it is owed.

16 10. Defendants are correct, however, that alter ego and constructive
17 trust are not separate causes of action. They are remedies.

18 11. Alter ego is therefore premature at this time. It may become a
19 more relevant issue if Nevada Gold Mines and Barrick Goldstrike do not have
20 assets to satisfy a judgment ultimately in this case, and then the Court will
21 have a discussion about that.

22 12. Constructive trust is likewise not a cause of action. By this order,
23 the Court grants Bullion leave to amend the complaint to add the constructive
24 trust remedy into its prayer for relief. Bullion is also ordered to better allege
25 the fraudulent acts complained of against the individual defendants. Bullion
26 cannot group the defendants as a group under NRCP 9 for pleading purposes.

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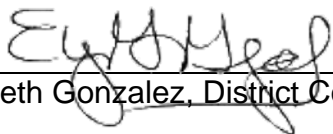
ORDERED that

1. Barrick Gold Corporation's and Barrick Nevada Holding LLC's motions to dismiss are DENIED;

2. Barrick Goldstrike's, Barrick Gold Exploration's, and Nevada Gold Mines' motions are GRANTED IN PART AND DENIED IN PART as described above; and

3. Bullion is GRANTED leave to amend the complaint as described above.

Dated this 18th day of November, 2020.


Elizabeth Gonzalez, District Court Judge

Respectfully submitted by:
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Helm, Jessica

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Sent: Thursday, November 5, 2020 11:32 AM
To: Smith, Abraham; Clay Brust
Cc: Polsenberg, Daniel F.; Helm, Jessica; Noltie, Lisa; Jorgensen, J. Christopher; Brandon Mark; Ashley C. Nikkel; Michael R. Kealy; James Pisanelli; Debra Spinelli; Kimberly Peets; Kelley, Cynthia
Subject: RE: Bullion v. Barrick order regarding motions to dismiss
Attachments: Bul OrderDenyMSJ 005 - redlines.docx

[EXTERNAL]

Abe,

A proposed minor tweak in the attached. If agreeable, you may submit with our e-signature.

Also, we presume Bullion will be filing its amended complaint promptly consistent with the Court's prior statements on amendments/timing. If this assumption is incorrect, please let us know so we can discuss and confer.

Thanks,

Dustun

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Subject: RE: Bullion v. Barrick order regarding motions to dismiss

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.

BARRICK GOLD CORPORATION,
Petitioner,

Electronically Filed
Jan 25 2021 09:35 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

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

Respondents,

and

BULLION MONARCH MINING, INC.,
Real Party in Interest.

PETITION FOR WRIT OF PROHIBITION

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the foregoing are persons or entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Petitioner Barrick Gold Corporation does not have a parent corporation and there is no publicly held company that owns 10% or more of Petitioner Barrick Gold Corporation's stock.

Petitioner Barrick Gold Corporation is represented by Pisanelli Bice PLLC and Parsons Behle & Latimer on this writ proceeding and in the proceedings in the district court.

DATED this 22nd day of January, 2021.

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ROUTING STATEMENT

This writ petition is presumptively retained by the Nevada Supreme Court because the case originates in business court. NRAP 17(a)(9) (The Supreme Court "shall hear and decide . . . cases originating in business court").

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I. OVERVIEW AND RELIEF SOUGHT

Barrick Gold Corporation ("Barrick Gold") petitions this Court under NRAP 21 and NRS Chapter 34 for a writ of prohibition against the District Court's order entered on December 9, 2020 (the "Order") denying Barrick Gold's motion to dismiss for lack of personal jurisdiction pursuant to NRCP 12(b)(2).

Barrick Gold is the ultimate foreign parent company of separately incorporated subsidiaries that, in turn, own and operate mines in Nevada. Barrick Gold's contact with Nevada ends there – indirect ownership of companies involved in this litigation. *For over a decade*, Bullion Monarch Mining, Inc. ("Bullion") has been engaged in litigation with Barrick Gold subsidiaries that own property and operate mines in Nevada over claims that Bullion is owed royalties stemming from an agreement executed in 1979 (the "1979 Agreement"). These subsidiaries were not the original parties to the 1979 Agreement. Instead, Bullion has insisted for nearly a decade that the 1979 Agreement runs with the land and thus anyone who acquires the underlying property becomes bound by it, along with purported royalty obligations on not only the subject property, but also a very large surrounding "area of interest" ("AOI") defined in the 1979 Agreement.

It is intuitive then that the purported target of Bullion's claims has always been the entities that actually own the land from which the mineral production occurs. Despite these unassailable facts, Bullion decided to name the ultimate foreign parent,

Barrick Gold, as a party and concocted a jurisdictional theory, which the district court accepted, that purportedly renders Barrick Gold itself subject to *specific* personal jurisdiction in Nevada for Bullion's AOI royalty claims, despite Barrick Gold never owning the underlying property.

This novel theory of jurisdiction is based on a 2019 corporate transaction in which Barrick Gold's indirect subsidiaries' then-assets were contributed to a new joint venture subsidiary. In that transaction, Barrick Gold's indirect subsidiaries merely reorganized certain operations and assets in Nevada, along with another joint venture partner, into a single entity – Nevada Gold Mines, LLC ("NGM") – for increased efficiency. While NGM now holds the property Bullion believes is covered by its AOI royalty, the formation of this new joint venture did not expand or alter Bullion's underlying liability claims. Indeed, the formation of NGM is not at issue in Bullion's lawsuit to determine if it is entitled to AOI royalties and has no relation or nexus to Bullion's royalty claims; NGM, which is a named party in the action, is just a different subsidiary that happens to now own some properties formerly owned by other subsidiaries. In other words, led astray by Bullion, the district court's jurisdictional hook is premised on conduct having no relation to the AOI royalty dispute, which therefore cannot give rise to specific jurisdiction.

Further, Bullion's royalty claims unquestionably do not arise from the process creating the joint venture subsidiary. There can be no specific jurisdiction over

Barrick Gold for Bullion's AOI royalty claims that it expressly admits arise from the 1979 Agreement from the formation of a subsidiary joint venture 40 years later. Accordingly, Bullion's pending claims against the subsidiaries for proceeds from minerals produced from mines involved in the transaction (mines then and still now owned by Barrick Gold's indirect subsidiaries) do not establish specific jurisdiction over the ultimate parent, and the district court's order ruling otherwise is unfaithful to controlling law.

Writ relief is necessary and appropriate here to challenge the district court's invalid exercise of personal jurisdiction over Barrick Gold.

II. ISSUE PRESENTED

Whether the district court erred in finding that Barrick Gold, the ultimate parent, is subject to specific personal jurisdiction in Nevada for Bullion's claims seeking royalties on mineral production from mines owned by Barrick Gold's indirect subsidiaries because, in 2019, these subsidiaries transferred their then-existing assets into a newly-formed joint venture subsidiary, which is a named party in the action?

III. FACTS RELEVANT TO UNDERSTANDING THIS PETITION

A. Bullion's Claims Seeking Royalties on Mineral Production Arise from a Purported 1979 Agreement.

Bullion has long insisted that its royalty claims arise from a 1979 Agreement. Bullion claims that the 1979 Agreement runs with the land and thus anyone who acquires the Subject Property becomes bound by the 1979 Agreement and the

purported obligation to pay royalties on mineral production. The royalty payments Bullion demands are from properties that fall within a very large designated area outside and beyond the Subject Property covering over two hundred square miles (the "Area of Interest" or "AOI").¹ Petitioner's Appendix ("PA") 344-359. Bullion's complaint makes this abundantly clear, and incorporates the 1979 Agreement as an exhibit. PA361-390.

As Bullion alleges in its complaint, "[i]n 1979, four prospective members of a joint venture negotiated with Bullion to give up both its mining claims in a particularly profitable area and also to refrain from competing for any other property in the surrounding area." PA 346. The 1979 Agreement has a term of 99 years and supposedly gives Bullion a royalty beginning "with a series of fixed payments up to \$1 million, and [i]s thereafter limited to 1% gross smelter return (GSR) royalty based upon mineral production." PA 347-348. According to Bullion's theory, anyone who subsequently acquires property subject to the 1979 Agreement becomes bound by its terms and is obligated to Bullion for royalties on mineral production not only from the Subject Property but also within the vast Area of Interest. PA 348-351.

¹ The Subject Property and the Area of Interest are both described in the 1979 Agreement. The property purportedly subject to the 1979 Agreement is mostly located in what is known as the Carlin Trend near Elko, Nevada. PA 32-33.

Bullion's complaint asserts five substantive claims all related to its claim for AOI royalties: (1) declaratory judgment; (2) breach of contract; (3) breach of the covenant of good faith and fair dealing; (4) unjust enrichment; and (5) accounting.² PA 351-358. Bullion's express allegations in its complaint confirm that all its claims arise from the purported 1979 Agreement. *Id.* (referencing an obligation "to pay Bullion royalties on the production from mining activities *pursuant to the 1979 Agreement*" and that there has been a "material[] breach[] [of] the *terms of the 1979 Agreement*" (emphasis added)).

B. Barrick Gold is the Ultimate Foreign Parent Company.

Barrick Gold is a publicly traded Canadian corporation headquartered in Toronto, Canada. PA 567. It is the ultimate foreign parent company of numerous subsidiaries that own property and conduct mining operations and processing activities in various regions and countries around the world. PA 568. None of Barrick Gold's officers live in Nevada, with the majority (all but one) living in Toronto. PA 567. Barrick Gold's Board of Directors holds its meetings mostly, if not exclusively, in Toronto, and Barrick Gold's corporate records are maintained there. *Id.*

² Bullion's second amended complaint asserts purported claims for "constructive trust" and "alter ego and corporate veil-piercing." But, as the district court has ruled, these are not claims, but rather remedies, and they are premature in this case unless and until a judgment is not only rendered, but also collection cannot be had. PA 1250-1259.

Barrick Gold does *not* itself *own any properties or mines*, and it does not itself engage or operate mines or engage in processing activities in Nevada or anywhere else within the United States. PA 567-569. Because Barrick Gold itself does not conduct business in Nevada, Barrick Gold is not (and never has been) registered to do business as a foreign corporation in Nevada. *Id.* Consistent with this fact, Barrick Gold does not have any employees, offices, telephone listings, or any bank accounts in Nevada, and it does not pay any Nevada taxes directly. *Id.*

Rather, Barrick Gold's contact with and presence in Nevada is through a lengthy chain of separately incorporated U.S. subsidiaries with their own corporate existence. PA 571-572. When Bullion filed this lawsuit and up until July 2019, the mines and properties that Bullion alleged were subject to its royalty claims were owned by Barrick Goldstrike Mines Inc. ("Goldstrike") and Barrick Gold Exploration, Inc. ("Exploration"). *Id.* Goldstrike is a wholly owned subsidiary of Exploration. Exploration, in turn, is a wholly owned subsidiary of ABX Financeco Inc. ("ABX"), and ABX is a wholly owned subsidiary of Barrick Gold.³ *Id.*

³ Bullion originally named ABX as a defendant in the action but then *voluntarily dismissed* ABX after conducting jurisdictional discovery, presumably because that Barrick Gold subsidiary is unconnected to the royalty claims given its position up the corporate ladder. This fact makes Bullion's persistence and the district court's decision reaching even further up the corporate ladder all the more perplexing.

Like all parent companies, Barrick Gold exerts some degree of supervision over its subsidiaries. *Id.* Yet, Barrick Gold's involvement does not transgress the boundaries of appropriate oversight typically involved in a parent-subsidary relationship. *Id.* Barrick Gold has, for example, never directed the mining operations or processing activities of any of its indirect subsidiaries operating in Nevada. *Id.* Directly relevant to the underlying claims on which specific personal jurisdiction would necessarily need to be based, Barrick Gold has never directed mining to occur on a particular piece of property. Instead, day-to-day management of the various mining operations in Nevada is the responsibility of Barrick Gold subsidiaries that historically were in turn managed through a regional structure. *Id.* Barrick Gold's involvement is that of a typical parent corporation, including setting general policy and direction for its subsidiaries, monitoring their performance, supervising their budget decisions, requiring approval for large financial transactions and decisions, and issuing consolidated corporate and financial reports. *Id.*

Consistent with its role as the parent to indirect subsidiaries operating in Nevada, Barrick Gold obviously would have some involvement in the early-2019 decision to combine its subsidiaries' mining assets and operations in Nevada with those of a competitor, Newmont Goldcorp Corporation ("Newmont"), to form a new joint venture company. Specifically, on March 10, 2019, Barrick Gold and Newmont entered into an Implementation Agreement that caused and governed their respective

subsidiaries' contribution and combination of their mining assets and operations in Nevada in the new joint venture that is NGM. PA 660-710. Recognizing this as a perfectly ordinary parent company activity on both their parts, Barrick Gold and Newmont expressly agreed that any disputes flowing from the corporate transactional process would be governed by Canadian law and the jurisdiction of courts of the Province of Ontario. PA 707.

On July 1, 2019, the transaction closed establishing Nevada Gold Mines, LLC ("NGM"), a Delaware limited liability company, with a massive mining operation comprising eight mines, along with their associated infrastructure and processing facilities in Nevada. PA 851-947. All assets and liabilities part of the transaction were contributed to and assumed by NGM. PA 675-677. Thus, as it stands today, NGM is the entity that owns the vast land and mineral rights and operates the mines in Nevada from which Bullion claims it is owed an AOI royalty stemming from the 1979 Agreement. PA 675-677, 851-947. As such, NGM assumed liability (if any) that may stem from Bullion's AOI royalty claims related to the 1979 Agreement. *Id.*

NGM is owned by Barrick Nevada Holding LLC ("Barrick Holding") and Newmont USA Limited. PA 1041-1042. Barrick Holding, a Delaware limited liability company, maintains a 61.5% membership interest in NGM. *Id.* In turn, various Barrick Gold U.S. subsidiaries, including Goldstrike and Exploration, received a membership interest in Barrick Holding for the conveyance of their

respective assets. *Id.* Barrick Gold remains the ultimate parent company of these indirect subsidiaries but owns no direct membership interest in NGM or Barrick Holding and still does not operate any mines or own any property in Nevada. PA 571-572. All entities remain separate and independent, with their own corporate existence.⁴ *Id.*

C. The Federal Litigation.

1. Bullion stipulates to dismiss Barrick Gold.

In April 2008, Bullion filed an action in the United States District Court, District of Nevada, against Newmont, alleging that Newmont was liable to Bullion for AOI royalties on production of mining claims under the 1979 Agreement. PA 577-584. Bullion claimed that Newmont became bound by the terms of the 1979 Agreement on December 23, 1991, when Newmont entered into a joint venture with High Desert Mineral Resources of Nevada, Inc. ("High Desert") related to mining properties purportedly subject to the 1979 Agreement. *Id.*

Over a year into the litigation, in June 2009, Bullion amended its complaint to name Barrick Gold and Goldstrike as defendants. PA 419-427. Bullion alleged that Goldstrike was liable to Bullion for royalties under the 1979 Agreement because

⁴ Along with Barrick Gold, Bullion has named Goldstrike, Exploration, NGM, and Barrick Holding as defendants. PA 344-359.

it was the corporate successor to High Desert. *Id.* Bullion's allegations were intentionally vague and merely "lumped together" Barrick Gold and Goldstrike. *Id.*

In response, Barrick Gold immediately moved to dismiss for lack of personal jurisdiction. PA 460-481. As is presently the case, Barrick Gold's 2009 motion established that Barrick Gold had no presence in Nevada, had no contacts with Nevada, and was not subject to jurisdiction in Nevada. *Id.* Moreover, as Barrick Gold explained to Bullion back then, Barrick Gold's only contact with Nevada was through a chain of separately incorporated indirect subsidiaries that maintained all corporate formalities and their separate corporate existence. *Id.* Instead of contesting these facts or making any sort of assertion that Barrick Gold was subject to jurisdiction in Nevada, Bullion voluntarily dismissed Barrick Gold. PA 483-484.

2. *Bullion conducts jurisdictional discovery.*

After stipulating to dismiss Barrick Gold, Bullion decided to proceed solely against Goldstrike, the then-owner of certain land and mineral rights that Bullion alleges are subject to the 1979 Agreement.⁵ During this time, Bullion conducted extensive discovery related to its purported AOI royalty claims arising from the

⁵ The case against Goldstrike was severed and proceeded as a sub-case to Bullion's action against Newmont. In the Newmont case, the federal district court ultimately granted summary judgment against Bullion, finding that Bullion had failed to timely and diligently pursue its claims. PA 630-658.

1979 Agreement. Yet, not once did Bullion claim that Barrick Gold was a necessary or proper party.⁶

In 2017, the federal court was alerted to a subject-matter jurisdictional issue that would render it without jurisdiction. PA 486-494. Specifically, Bullion and Goldstrike were corporate citizens of the same state – Utah – when the case was first filed, thus rendering the federal court without diversity jurisdiction. *Id.* To fully explore this issue, the federal court granted Bullion wide-ranging jurisdictional discovery. *Id.*

Bullion attempted to use this jurisdictional discovery to suggest that Barrick Gold improperly controlled the activities of its subsidiaries, effectively making its subsidiary's headquarters "Toronto, Canada – the headquarters of [their] ultimate corporate parent." PA 493. Had Bullion established that Barrick Gold's Toronto headquarters controlled the activities of Goldstrike, Bullion might have maintained the case in federal court. But the federal court rejected Bullion's contention, finding that the "unrebutted evidence tends to show that [Goldstrike's] executives in Salt Lake City – not Toronto – directed and controlled [Goldstrike's] activities." *Id.* The "unrebutted evidence" alluded to by the federal court derived

⁶ An aspect of the federal litigation against Goldstrike was also presented to this Court through certified questions from the Ninth Circuit concerning Nevada's rule against perpetuities, with the Court issuing an opinion in 2015. *See Bullion Monarch v. Barrick Goldstrike*, 131 Nev. 99, 345 P.3d 1040 (2015).

from the jurisdictional discovery Bullion conducted, which established that Barrick Gold respects its subsidiaries' separate corporate existence and does not improperly control them.⁷ PA 498-565.

D. Bullion Refiles in State Court, Barrick Gold Moves to Dismiss, and Bullion Seeks Leave to Amend to Add Newly-Minted Theories of Alter-Ego and Agency.

Following the dismissal of its federal case against Goldstrike, Bullion commenced the underlying action in the Eighth Judicial District Court in December 2018.⁸ PA 1-11. Bullion's complaint asserted the same five claims it asserted in the federal case, which Bullion alleged all arise from the 1979 Agreement. *Id.* Remarkably, despite dismissing Barrick Gold long ago, Bullion's complaint sought to once again bring Barrick Gold back into the mix.

Bullion's complaint also named Exploration and ABX as defendants. ABX moved to dismiss for lack of personal jurisdiction, and the district court granted Bullion's request to conduct jurisdictional discovery. PA 42-44. After wasting significant time and energy, the jurisdictional discovery confirmed that ABX was

⁷ Bullion appealed this decision to the Ninth Circuit. Yet, after the matter was fully briefed, Bullion voluntarily dismissed the appeal and any challenge to the federal court's ruling, preferring instead the new forum of Nevada state courts. PA 496.

⁸ The underlying state court action was also subject to a prior writ proceeding before this Court concerning whether Bullion's claims against Goldstrike were barred under the applicable Nevada statute of limitations. *See Barrick Goldstrike v. Eighth Jud. Dist. Ct.*, Case No. 79652.

merely an entity in the Barrick corporate family chain with no relation to the asserted claims, and Bullion abandoned ABX as a defendant. PA 344-359. Of course, Barrick Gold is even further removed from Bullion's royalty claims.

Yet, as before, the substantive and jurisdictional basis for naming Barrick Gold remains a mystery. The only specific allegations in the complaint about Barrick Gold were: (1) Barrick Gold "is an Ontario corporation doing business in Nevada at all times relevant hereto," and (2) "Barrick Gold is – and at all relevant times was – the 100% owner of ABX [Financeco Inc., another defendant]."⁹ PA 2.

After Bullion effectuated service, Barrick Gold moved to dismiss for lack of personal jurisdiction in October 2019.¹⁰ PA 45-56. Barrick Gold's motion established that Barrick Gold still had no contacts in Nevada sufficient to confer personal jurisdiction. *Id.* In response, Bullion confessed that Barrick Gold itself has no contacts with Nevada (a fact it knows from the jurisdictional discovery it already conducted) but now insisted that Barrick Gold was subject to jurisdiction in Nevada through its subsidiaries' contacts under either an alter ego or agency theory. PA 186-201. The problem for Bullion: Its complaint failed to allege a single fact to support these newly-contrived contentions.

⁹ Again, Bullion voluntarily dismissed ABX following jurisdictional discovery.

¹⁰ Bullion served Barrick Gold through the Hague Convention in Canada on August 29, 2019, as Barrick Gold does not maintain a registered agent in Nevada because it does not conduct business in the state. PA 330-335.

Acknowledging its defective pleading, Bullion sought leave to (again) amend its complaint to include new allegations to support supposed claims for "constructive trust" and "alter ego and corporate veil-piercing," and NGM as a defendant. PA 129-185. In its briefing, Bullion framed the transaction and formation of NGM as support for jurisdiction over Barrick Gold under an agency or alter ego theory; *not* that Barrick Gold was supposedly now directly subject to specific personal jurisdiction in Nevada. *Id.* Noting Nevada's liberal policy permitting amendments, the district court ultimately granted Bullion's request to file its proposed amended complaint. PA 336-338.

After filing its amended complaint on June 29, 2020, Bullion sought leave to amend again, to add Barrick Holding – the holding company whose sole purpose is to hold a membership interest in NGM – as a defendant. PA 339-343. The district court again granted Bullion leave to amend on July 14, 2020. *Id.*

E. The District Court's Jurisdictional Ruling.

After the district court granted Bullion's successive motions for leave to amend, Bullion finally filed its second amended (and then-operative) complaint on July 14, 2020. PA 344-390. Barrick Gold again moved to dismiss for lack of personal jurisdiction. PA 391-414. Because Bullion's second amended complaint, and the briefing related to its amendments, argued exclusively that Barrick Gold was purportedly subject to personal jurisdiction through its subsidiaries' contacts, the

motion to dismiss highlighted the numerous deficiencies with Bullion's assertions. *Id.*

In response, Bullion suggested for the *first time* that Barrick Gold was directly subject to specific personal jurisdiction in Nevada because of the transaction and formation of NGM. PA 1043-1148. Barrick Gold's reply pointed out the many errors with Bullion's contention, including the fact that Bullion's royalty claims in no way arise from this 2019 transaction, as confirmed by the fact that Bullion named Barrick Gold as a defendant nearly a decade ago, and again in December 2018, for these very same claims relating to the 1979 Agreement. PA 1149-1173.

On September 22, 2020, the district court conducted a hearing on Barrick Gold's motion to dismiss, as well as other pending motions to dismiss, including motions to dismiss Bullion's "claims" for "constructive trust" and "alter ego and veil-piercing." PA 1174-1249. After hearing arguments, the Court denied Barrick Gold's motion to dismiss, finding that Barrick Gold was subject to specific personal jurisdiction in Nevada for Bullion's claims. PA 1231-1233. The district court ultimately based this decision on the transaction and formation of NGM *even though Bullion's claims arise from an agreement signed 40 years before NGM's formation. Id.*

On November 19, 2020, the district court entered a written order with its ruling providing, in relevant part:

2. This Court also denies the motions as they relate to personal jurisdiction. On March 10, 2019, Barrick Gold Corporation and Newmont Mining Corporation entered into an implementation agreement regarding the formation of a joint venture.

3. On July 1, 2019, Barrick Gold Corporation, Barrick Nevada Holding LLC, Newmont Goldcorp Corporation (formerly Newmont Mining Corporation), Newmont USA Limited, and Nevada Gold Mines LLC entered into an Amended and Restated Limited Liability Company Agreement of Nevada Gold Mines LLC.

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

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

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

7. Barrick Gold Corporation and Barrick Nevada Holding LLC have therefore purposefully availed themselves of a Nevada forum so as to subject them to specific personal jurisdiction.

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

PA 1250-1259. The notice of entry of order was filed on December 9, 2020, and Barrick Gold promptly files this petition seeking writ review from the district court's order denying its motion to dismiss for lack of personal jurisdiction.

IV. REASONS WHY THE REQUESTED WRIT SHOULD ISSUE

A. The District Court's Jurisdictional Ruling Warrants Writ Review.

A writ of prohibition is warranted when a district court acts without or in excess of its jurisdiction. NRS 34.320; *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 373, 328 P.3d 1152, 1156 (2014). The right to appeal is not an adequate and speedy remedy to correct a district court's invalid exercise of personal jurisdiction. *Viega*, 130 Nev. at 374, 328 P.3d at 1156; *Fulbright & Jaworski v. Eighth Jud. Dist. Ct.*, 131 Nev. 30, 35, 342 P.3d 997, 1001 (2015). Thus, it is well settled that writ review is an appropriate method for challenging jurisdictional orders. *Id.* Writ review is plainly necessary and appropriate here.

The Court reviews a district court's order regarding jurisdictional issues *de novo* when the facts are undisputed. *Baker v. Eighth Jud. Dist. Ct.*, 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000). Any factual findings regarding personal jurisdiction are reviewed for clear error. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

A future appellate review of the district court's Order is not a plain, adequate, or a speedy remedy under the law. The district court's ruling requiring Barrick Gold

to defend claims in Nevada simply because of its role as a parent corporation in *a corporate transaction that is not at issue in the case* cannot stand even under the most deferential standard. The district court's invalid exercise of jurisdiction over Barrick Gold cannot wait further review. Extraordinary writ relief is more than appropriate at this time.

B. The District Court Erred in Finding that Barrick Gold is Subject to Specific Personal Jurisdiction.

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

Unlike a general jurisdiction analysis, "specific jurisdiction is proper only where the cause of action arises from the defendant's contacts with the forum." *Fulbright & Jaworski*, 131 Nev. at 37, 342 P.3d at 1002 (internal quotations omitted). More specifically, for Nevada courts to exercise specific personal jurisdiction over a nonresident defendant: (1) the defendant must purposefully avail itself of the

privilege of acting in the forum state or purposefully direct its conduct towards the forum state, and (2) the cause of action must arise from the defendant's purposeful contact or activities in connection with the forum state, such that it is reasonable to exercise personal jurisdiction. *Dogra v. Liles*, 129 Nev. 932, 937, 314 P.3d 952, 955 (2013); *Arbella Mut. Ins. Co.*, 122 Nev. at 513, 134 P.3d at 712-13.¹¹

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

¹¹ Where, as here, the claims sound in contract, courts apply a "purposeful availment" analysis. See *Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015).

1. The formation of NGM does not establish purposeful availment, nor does Bullion's claims arise from such activity.

The district court's ruling that Barrick Gold purposefully availed itself of jurisdiction in Nevada is contrary to law. Specifically, the district court disregarded controlling law when it determined that Barrick Gold purposefully availed itself as a result of two 2019 agreements: (1) the Implementation Agreement between Barrick Gold and Newmont, which integrated their respective subsidiaries' mining assets and operations in Nevada, and (2) the subsequent Limited Liability Agreement, which formed NGM. Bullion's AOI royalty claims do not "arise *in part* from these agreements."

"[S]pecific jurisdiction is confined to *adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.*" *Goodyear Dunlop v. Brown*, 564 U.S. 915, 919 (2011) (emphasis added). Purposeful availment thus requires that "[t]he cause of action . . . arise from the consequences in the forum state of the defendant's activities." *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 458, 282 P.3d 751, 755 (2012) (internal quotations omitted).

It is well settled that a parent corporation does not purposefully avail itself of privileges of doing business in Nevada by *forming and owning* an independent subsidiary that conducts business here. *Viega*, 130 Nev. at 381, 328 P.3d at 1160; *McCulloch Corp. v. O'Donnell*, 83 Nev. 396, 399, 433 P.2d 839, 840 41 (1967); *Sonora*, 99 Cal. Rptr. 2d at 841–42. The mere fact that Barrick Gold was involved

in the "process" and "implementation" of forming NGM is not conduct outside the normal expectation of the parent-subsidary relationship insufficient for purposeful availment. *Sonora*, 99 Cal. Rptr. 2d at 842 (parent company's involvement in the formation of the mine operation was not conduct outside the normal expectations of the subsidiary relationship); *In re Methyl Tertiary Butyl Ether (MTBE) Prod. Liab. Litig.*, 959 F. Supp. 2d 476, 494-495 (S.D.N.Y. 2013) ("[T]his position is contrary to law, as it would subject a foreign holding company to personal jurisdiction wherever it acquired new investments.").

Indeed, as the *Sonora* Court recognized, "when a new business is formed . . . they do not materialize from nothing." *Id.* at 842. Accordingly, it is not out of the ordinary for a parent company to be involved in the process of forming a new venture, including "to contribute its own funds or property, or obligate itself (directly or as a guarantor) for loans from third parties, for these purposes." *Id.* "That is the essence of an investment, the consideration for which is the ownership interest (such as stock) that the contributor/owner receives in return." *Id.*

To hold otherwise – as the district court did here – swallows this Court's holding in *Viega*, resulting in situations like the present where a parent company is found to have purposefully availed itself of jurisdiction in Nevada, even though those same contacts are insufficient to establish personal jurisdiction over a parent company under an agency theory. *Viega*, 130 Nev. at 378, 328 P.3d at 1158 (parent

company's control must be so pervasive that it veers "into management by the exercise of control over the internal affairs of the subsidiary and the determination of how the company will be operated on a day-to-day basis.") If "[n]one of the factors support jurisdiction over [the parent company] on the basis of agency . . . they likewise do not support jurisdiction over [the parent company] on the basis of availment." *Sonora*, 99 Cal. Rptr. 2d at 847.

Simply put, Barrick Gold did not purposefully avail itself of the privileges and laws of Nevada through its involvement as a parent company in the formation of NGM. NGM is a subsidiary of Barrick Gold through a lengthy chain of separately incorporated U.S. subsidiaries, and all are separate and independent entities that comply with their own corporate formalities. PA 567-572, 1041-1042. To this day, in Nevada, Barrick Gold has never registered to do business as a foreign corporation, never owned property, never paid taxes, does not have any employees, offices, or bank accounts, and does not itself engage in mining or processing activities or operate mining or processing facilities within Nevada. *Id.*

Moreover, contrary to the district court's ruling, Bullion's claims do not (even in the slightest part) arise from the Implementation Agreement and the subsequent Limited Liability Company Agreement forming NGM. *See Arbella*, 122 Nev. at 515-16, 134 P.3d at 714 ("[T]he claims must have a specific and direct relationship or be intimately related to the forum contacts." (internal quotations

omitted)). As even Bullion alleged, Bullion's claims – declaratory relief, breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment – *arise from the 1979 Agreement*, which Bullion claims runs with the land and thus binds anyone who acquires the Subject Property, including with the purported obligation to pay royalties on mineral production within the very large Area of Interest. PA 344-359. These claims do not arise from the corporate agreements that formed NGM.

The *Sonora* decision cited extensively and favorably by this Court in *Viega* is instructive. There, after determining that the parent corporation, Diamond, was not subject to jurisdiction under an alter ego or agency theory, the court addressed whether the parent was subject directly to specific personal jurisdiction. Importantly, the *Sonora* Court found that Diamond's actions of forming and owning an independent subsidiary, Sonora, for the purpose of conducting business in the forum state, "even if it is assumed such actions constituted purposeful availment (which they did not), cannot provide the basis of specific jurisdiction in this dispute" because those actions (*i.e.*, Diamond's involvement in process and formation of Sonora) had no relation or connection to plaintiff's claims over a contract with Sonora for endowment payment from the mine. *Sonora*, 99 Cal. Rptr. 2d at 848.

Bullion's claims arise from the 1979 Agreement; not the agreements that led to the creation of NGM. Bullion's own conduct confirms as much. After all, had

Bullion's claims arisen from these 2019 agreements, then it would not have named Barrick Gold as a defendant nearly a decade ago in the federal litigation nor included Barrick Gold in the original complaint in this matter in December 2018, months before the agreements were executed. PA 1-11. In addition, Bullion has already conducted jurisdictional discovery in this case; discovery that lead to the voluntary dismissal of ABX after Bullion rashly named it as a defendant.

Moreover, there is nothing in the record that supports the district court's determination that Bullion was a supposedly a "beneficiary" of these agreements. *Lipshie v. Tracy Inv. Co.*, 93 Nev. 370, 379, 566 P.2d 819, 824-25 (1977) (to be a beneficiary to a contract a party must show a clear intent of the contractual parties to benefit the third party, and the third party's foreseeable reliance on the agreement).¹² But perhaps most importantly for a jurisdictional analysis, the district court's focus on the purported "benefit" to Bullion highlights the district court's misplaced analysis. *E.g., Walden v. Fiore*, 571 U.S. 277, 284 (2014) (stating that the Court has "consistently rejected attempts to satisfy the defendant-focused minimum contacts inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State").

¹² Indeed, the express terms of the agreement provide that no third party beneficiary was intended. PA 943.

2. ***The forum selection clause in the unrelated Limited Liability Company Agreement is insufficient to establish reasonableness of exercising personal jurisdiction.***

"[Q]uestions involving personal jurisdiction mandate an inquiry whether it is reasonable to require the defendant to defend *the particular suit* which is brought there." *Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 700–01, 857 P.2d 740, 749 (1993) (citations and quotations omitted). Rather than consider relevant factors to this inquiry, the district court determined that "the forum-selection clause in the [Limited Liability Company Agreement for NGM] shows that it is not unreasonable for the Court to exercise its jurisdiction in *this* case." PA 1254 (emphasis added). Respectfully, the forum selection clause in the NGM Limited Liability Company Agreement – an agreement to which Bullion is not a party and has no rights – is hardly relevant to whether it is reasonable for Barrick Gold to defend against Bullion's specific lawsuit seeking AOI royalties pursuant to the 1979 Agreement.

The forum selection clause in the NGM Limited Liability Company Agreement expressly provides that the parties, including Barrick Gold, were *only* agreeing to jurisdiction in Nevada for disputes *among themselves* relating to *that specific agreement* and the rights and obligations of the parties to that agreement:

Each of the Parties hereby irrevocably attorns and submits to the exclusive jurisdiction of the courts of the State of Nevada or federal courts of Nevada respecting all matters *relating to this Agreement and the rights and obligations of the Parties hereunder.*

PA 930. The mere fact that the parties agreed to jurisdiction in Nevada for disputes between them relating to the NGM Limited Liability Company Agreement (the corporate document that outlines the structure and operation of NGM) has no bearing on whether it is reasonable to exercise jurisdiction over Barrick Gold for Bullion's pre-existing AOI royalty claims in this lawsuit. The NGM Limited Liability Company Agreement forum selection clause is intended to resolve disputes regarding the structure and operation of NGM between the parties to that specific agreement; not disputes brought by a nonparty to that agreement over unrelated claims that it is owed royalties.

This Court's decision in *Trump* is informative on this point. There, the trust agreement that was a part of the employment contract being sued upon contained a Nevada choice-of-law provision. Thus, the Court determined that defendant "should have reasonably anticipated being haled into court in Nevada" for that particular suit. *Trump*, 109 Nev. at 703, 857 P.2d at 750. Unlike the trust agreement in *Trump* that contained a Nevada choice-of-law provision and was directly related to the employment dispute at issue, here, Barrick Gold could not reasonably anticipate being haled into court in Nevada for this particular royalty lawsuit as result of the forum selection clause in the entirely unrelated Limited Liability Agreement.

The *Nevada* forum selection clause in the NGM Limited Liability Company Agreement provides no more support to the *reasonableness* of specific jurisdiction

over Barrick Gold in this case than the *Canadian* forum selection clause in the NGM Implementation Agreement supports the *unreasonableness* of exercising specific jurisdiction over Barrick Gold in this case.¹³ Stated slightly differently, neither clause offers any support or tips the scales in either direction. The district court's contrary finding is insufficient under the law.

V. CONCLUSION

For all of the foregoing reasons, Barrick Gold respectfully requests the Court grant the requested writ petition, and enter an order vacating the district court's jurisdictional order and directing the district court to dismiss Barrick Gold.

DATED this 22nd day of January, 2021.

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¹³ The Implementation Agreement provides, in relevant part, that each party "submits to the non-exclusive jurisdiction of the courts of the Province of Ontario over any action or proceeding arising out of or relating to this Agreement." PA 707.

VERIFICATION

I, Todd L. Bice, Esq., declare as follows:

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

This declaration is executed on 22nd day of January, 2021 in Las Vegas, Nevada.

/s/ Todd L. Bice
TODD L. BICE, ESQ.

CERTIFICATE OF COMPLIANCE

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

I certify that I have read this brief and that it complies with the page or type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted, it is proportionately spaced, has a typeface of 14 points or more and 6,297 words.

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

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

DATED this 22nd day of January, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 22nd day of January, 2021, I electronically filed and served in the manner indicated below a true and correct copy of the above and foregoing **PETITION FOR WRIT OF PROHIBITION** properly addressed to the following:

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

**PA 01296-1346
FILED UNDER SEAL**