

JAMES R. CHRISTENSEN, PC
601 South 6th Street
Las Vegas, Nevada 89101

1 JAMES R. CHRISTENSEN, ESQ.
2 Nevada Bar No. 3861
3 James R. Christensen PC
4 601 S. 6th St.
5 Las Vegas NV 89101
6 (702) 272-0406 / (702) 272-0415 fax
7 jim@jchristensenlaw.com

8 SAMUEL T. REES, ESQ.
9 26 Muirfield Place
10 New Orleans, LA 70131
11 (213) 220-9988
12 STReesEsq@earthlink.net

13 Attorneys for Plaintiff, DANIEL E. WOLFUS

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **DISTRICT OF NEVADA**

16 DANIEL E. WOLFUS,
17 Plaintiff,
18 vs.

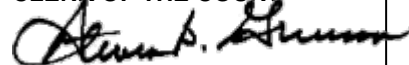
CASE NO.: A-17-756971-B
DEPT NO.: 27

NOTICE OF APPEAL

19 KENNETH A. BRUNK; RICHARD D.
20 MORITZ; BRADLEY J. BLACKETOR;
21 TIMOTHY HADDON; MARTIN M. HALE, JR.;
22 TREY ANDERSON; RICHARD SAWCHAK;
23 FRANK YU; JOHN W. SHERIDAN; ROGER
24 A. NEWELL; RODNEY D. KNUTSON;
25 NATHANIEL KLEIN; INV-MID, LLC, a
26 Delaware Limited Liability Company; EREF-
27 MID II, LLC, a Delaware Limited Liability
28 Company; HCP-MID, LLC, a Delaware
Limited Liability Company; and DOES 1
through 25.

Defendants.

Electronically Filed
2/12/2020 9:05 AM
Steven D. Grierson
CLERK OF THE COURT



Electronically Filed
Feb 18 2020 04:07 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

1 NOTICE HIS HEREBY GIVEN that Plaintiff DANIEL E. WOLFUS hereby
2 appeals to the Supreme Court of Nevada from (i) the Order Granting
3 Defendants' Motions to Dismiss Second Amended Complaint electronically
4 filed and entered on January 10, 2020, notice of entry of which was
5 electronically filed on January 13, 2020; (ii) the Order Regarding Defendants'
6 Motions to Dismiss Second Amended Complaint, electronically filed and
7 entered on June 6, 2018, notice of entry of which was electronically filed on
8 June 7, 2018; and (iii) the Court Minutes dated May 18, 2018.
9
10

11 Dated this 12th day of February, 2020.

12
13 /s/ Samuel T. Rees

14 JAMES R. CHRISTENSEN ESQ.

15 Nevada Bar No. 3861

16 James R. Christensen PC

17 601 S. 6th St.

18 Las Vegas NV 89101

19 (702) 272-0406

20 jim@jchristensenlaw.com

21 SAMUEL T. REES ESQ.

22 Admitted Pro Hac Vice

23 26 Muirfield Place

24 New Orleans, LA 70131

25 (213) 220-9988

26 streesesq@earthlink.net

27 Attorneys for Plaintiff DANIEL E. WOLFUS
28

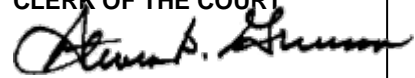
CERTIFICATE OF SERVICE

I CERTIFY SERVICE of **NOTICE OF APPEAL** was made this date
by electronic service (via Odyssey) to all parties currently shown on the
Court's e-serve list of recipients this 12th day of February 2020.

/s/ Dawn Christensen

An employee of James R. Christensen

JAMES R. CHRISTENSEN, PC
601 South 6th Street
Las Vegas, Nevada 89101



JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 3861
James R. Christensen PC
601 S. 6th St.
Las Vegas NV 89101
(702) 272-0406 / (702) 272-0415 fax
jim@jchristensenlaw.com

SAMUEL T. REES, ESQ.
26 Muirfield Place
New Orleans, LA 70131
(213) 220-9988
STReesEsq@earthlink.net

Attorneys for Plaintiff, DANIEL E. WOLFUS

EIGHTH JUDICIAL DISTRICT COURT

DISTRICT OF NEVADA

DANIEL E. WOLFUS,

Plaintiff,

vs.

CASE NO.: A-17-756971-B
DEPT NO.: 27

CASE APPEAL STATEMENT

KENNETH A. BRUNK; RICHARD D.
MORITZ; BRADLEY J. BLACKETOR;
TIMOTHY HADDON; MARTIN M. HALE,
JR.; TREY ANDERSON; RICHARD
SAWCHAK; FRANK YU; JOHN W.
SHERIDAN; ROGER A. NEWELL;
RODNEY D. KNUTSON; NATHANIEL
KLEIN; INV-MID, LLC, a Delaware
Limited Liability Company; EREF-MID II,
LLC, a Delaware Limited Liability
Company; HCP-MID, LLC, a Delaware
Limited Liability Company; and DOES 1
through 25.

Defendants.

1 (1) **Name of the Respondent/Cross-Appellant filing this Case**

2 **Appeal Statement:** Daniel E. Wolfus

3 (2) **Identify the Judge Issuing the Decision, Judgment, or Order**

4 **Appealed from:** The Honorable Nancy Allf signed and entered the orders
5 that are being appealed.

6 (3) **Identify each Respondent/Cross Appellant and the name and**

7 **address of Counsel for each Respondent/Cross Appellant:** Richard D.

8 Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W.

9 Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson. Their counsel

10 are Robert J. Cassity, Esq., David J. Freeman, Esq. HOLLAND & HART LLP,

11 9555 Hillwood Drive, 2nd Floor, Las Vegas, Nevada 89134 and Holly Stein

12 Sollod, Esq. (Admitted *Pro Hac Vice*), HOLLAND & HART LLP, 555 17th

13 Street, Suite 3200, Denver, Colorado 80202.

14 Kenneth A. Brunk. His counsel are Jason D. Smith, Santoro Whitmire,

15 10100 W. Charleston Boulevard, Suite 250, Las Vegas, Nevada 89135 and

16 Eric B. Liebman, Esq. (Admitted *Pro Hac Vice*) and Rebecca B. DeCook, Esq.

17 (Admitted *Pro Hac Vice*) Maye White, LLP, 1400 16th Street, 6th Floor, Denver,

18 Colorado 80202.

1 Martin M. Hale, Jr., Trey Anderson, and Nathaniel Klein. Their counsel
2 are Mark E. Ferrario, Esq. and Christopher R. Miltenberger, Esq., Greenberg
3 Traurig, LLP, 3773 Howard Hughes Parkway, Suite 400 North, Las Vegas,
4 Nevada 89169.
5

6 (4) **Identify each Appellant/Cross-Respondent and the Name and**
7 **Address of Appellate Counsel, if known, for each Appellant/Cross**
8 **Respondent:** Daniel E. Wolfus. His counsel are James R. Christensen, Esq.,
9 601 S. 6th Street, Las Vegas, NV 89101 and Samuel T. Rees (Admitted *Pro*
10 *Hac Vice*), 26 Muirfield Place, New Orleans, Louisiana 70131.
11

12 (5) **Indicate whether any attorney identified above in response to**
13 **question 3 or 4 is not licensed to practice law in Nevada and, if so,**
14 **whether the district court granted that attorney permission to appear**
15 **under SCR 42:** Samuel T. Rees, Holly Stein Sollod, Eric B. Liebman and
16 Rebecca B. Cook are not licensed to practice law in Nevada and the district
17 court granted permission for each to appear under SCR 42.
18
19
20

21 (6) **Indicate whether respondent/cross appellant was represented**
22 **by appointed or retained counsel in the district court:** Respondents were
23 all represented by retained counsel in the district court.
24

25 (7) **Indicate whether respondent/cross appellant was represented**
26 **by appointed or retained counsel on appeal:** Respondents were all
27 represented by retained counsel on appeal.
28

1 (8) Indicate whether respondent/cross appellant was granted
2 leave to proceed in *forma pauperis*, and the date of entry of the district
3 court order granting such leave: No *forma pauperis* order was entered.
4

5 (9) Indicate the date the proceedings commenced in the district
6 court: The underlying case, Case No. A-17-756971-B was commenced on
7 June 15, 2017.
8

9 (10) Provide a brief description of the nature of the action and
10 result in the district court, including the type of judgment or order being
11 appealed and the relief granted by the district court: While the underlying
12 action asserted several causes of action, this appeal only involves the First
13 Cause of Action for Securities Fraud under California Corporate Securities
14 Law of 1968, California *Corporations Code* §§ 25000, *et seq.*
15
16

17 Appellant alleged that he purchased 200,000 shares of common stock
18 from Midway Gold Corp ("Midway") on January 23, 2014, while in California,
19 for \$100,636.00 and then purchased 1,000,000 shares of Midway common
20 stock on September 19, 2014, while in California, for \$783,778.00. Appellant
21 alleges that both purchases were made based upon materially false and
22 misleading statements of fact and falsely and fraudulently omitted material
23 statements of fact in violation of Sections 25401 of California's *Corporations*
24 *Code*.
25
26
27
28

1 Section 25501 of California *Corporations Code* creates a private right of
2 action in favor of Appellant as purchaser of this stock against Midway, who at
3 all relevant times was a reporting company under the Securities Exchange Act
4 of 1934 whose common shares were listed on both the NYSE Amex exchange
5 and the Vancouver Stock Exchange. Midway's common shares are securities
6 as defined in California *Corporations Code* § 25019.
7

8
9 The Respondents were officers and/or directors of Midway and were
10 alleged to be jointly and severally liable with Midway pursuant to Sections
11 25403 and 25504 of California's *Corporations Code*.
12

13 Appellant commenced this action on June 15, 2017. On June 30, 2017,
14 Wolfus filed his First Amended Complaint. In October 2017, Respondents
15 moved to dismiss the First Amended Complaint. By order filed on January 5,
16 2018, the District Court granted the motions to dismiss but gave Appellant
17 leave to amend.
18

19 On February 5, 2018, Appellant filed his Second Amended Complaint,
20 which is the operative complaint.
21

22 In April 2018, Respondents moved to dismiss the Second Amended
23 Complaint. After this motion was fully briefed, the District Court conducted a
24 hearing on the motions to dismiss on May 9, 2018.
25
26
27
28

1 On May 18, 2018, the District Court ruled on the motions to dismiss by
2 its Minute Order of that date. Insofar as is relevant to this appeal, the District
3 Court concluded that the sale of Midway's common stock occurred in 2009
4 pursuant to California *Corporations Code* § 25017(e) rather than in 2014 as
5 alleged by Appellant. Since there were no allegations in the Second Amended
6 Complaint of any untrue statement of a material fact or an omission of the
7 same in 2009, the District Court dismissed Appellant's First Cause of Action
8 for Securities Fraud with prejudice as to all Respondents.
9

11 The District Court's Minute Order was confirmed in the District Court's
12 Order Regarding Defendants' Motions to Dismiss Second Amended Complaint
13 filed on June 6, 2018. This order, however, did not resolve all of the causes of
14 action alleged in the Second Amended Complaint. The District Court denied
15 the motions to dismiss as to the remaining causes of action.
16

18 On June 12, 2018, Respondents Petitioned the Nevada Supreme Court
19 for a Writ of Prohibition or Alternatively, Mandamus. Following briefing and
20 oral argument, the Nevada Supreme Court issued its Writ of Prohibition on
21 November 8, 2019. By that Writ of Prohibition, the Nevada Supreme Court
22 directed the District Court to dismiss all of Appellant's remaining causes of
23 action.
24
25
26
27
28

1 Following remittitur, the District Court on January 10, 2020, filed its
2 Order Granting Defendants' Motions to Dismiss Second Amended Complaint.
3 By that order, the District Court vacated the June 6, 2018, Order Regarding
4 Defendants' Motion to Dismiss and then granted Respondents' motions to
5 dismiss as to all causes of action, including the First Cause of Action for
6 Securities Fraud, with prejudice as to all Respondents.
7

8
9 On January 13, 2020, Respondents filed their Notice of Entry of Order
10 Granting Defendants' Motions to Dismiss Second Amended Complaint.
11

12 On February 12, 2020, Appellant filed his Notice of Appeal.

13 **(11) Indicate whether the case has previously been the subject of**
14 **an appeal to or original writ proceeding in the Supreme Court and, if so,**
15 **the caption and Supreme Court docket number of the prior proceeding:**
16

17 This case has previously been before the Nevada Supreme Court. The
18 caption of that proceeding is *KENNETH A. BRUNK; RICHARD D. MORITZ;*
19 *BRADLEY J. BLACKETOR; TIMOTHY HADDON; MARTIN M. HALE, JR.;*
20 *TREY ANDERSON; RICHARD SAWCHAK; FRANK YU; JOHN W.*
21 *SHERIDAN; ROGER A NEWELL; RODNEY D. KNUTSON; NATHANIEL*
22 *KLEIN, Petitioners, v. THE EIGHTH JUDICIAL DISTRICT COURT OF THE*
23 *STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE*
24 *HONORABLE NANCY L. ALLF, DISTRICT JUDGE, DEPT. 27, Respondents,*
25
26
27
28

1 And DANIEL E. WOLFUS, Real Parties in Interest. The docket number of that
2 proceeding is 76052.

3 (12) **Indicate whether this appeal involves child custody or**
4 **visitation:** The case does not involve child custody or visitation.
5

6 (13) **If this is a civil case, indicate whether this appeal involves the**
7 **possibility of settlement:** The appeal likely does not involve the possibility of
8 settlement.
9

10 Dated this 12th day of February, 2020.

11 /s/ Samuel T. Rees
12 JAMES R. CHRISTENSEN ESQ.
13 Nevada Bar No. 3861
14 James R. Christensen PC
15 601 S. 6th St.
16 Las Vegas NV 89101
17 (702) 272-0406
18 jim@jchristensenlaw.com

19 SAMUEL T. REES ESQ.
20 Admitted Pro Hac Vice
21 26 Muirfield Place
22 New Orleans, LA 70131
23 (213) 220-9988
24 streesesq@earthlink.net

25 Attorneys for Plaintiff DANIEL E. WOLFUS
26
27
28

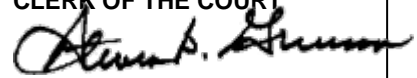
CERTIFICATE OF SERVICE

I CERTIFY SERVICE of **CASE APPEAL STATEMENT** was made
this date by electronic service (via Odyssey) to all parties currently shown
on the Court's e-serve list of recipients this 12th day of February 2020.

/s/ Dawn Christensen

An employee of James R. Christensen

JAMES R. CHRISTENSEN, PC
601 South 6th Street
Las Vegas, Nevada 89101



JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 3861
James R. Christensen PC
601 S. 6th St.
Las Vegas NV 89101
(702) 272-0406 / (702) 272-0415 fax
jim@jchristensenlaw.com

SAMUEL T. REES, ESQ.
26 Muirfield Place
New Orleans, LA 70131
(213) 220-9988
STReesEsq@earthlink.net

Attorneys for Plaintiff, DANIEL E. WOLFUS

EIGHTH JUDICIAL DISTRICT COURT

DISTRICT OF NEVADA

DANIEL E. WOLFUS,

Plaintiff,

vs.

CASE NO.: A-17-756971-B
DEPT NO.: 27

**NOTICE OF POSTING
COST BOND**

KENNETH A. BRUNK; RICHARD D.
MORITZ; BRADLEY J. BLACKETOR;
TIMOTHY HADDON; MARTIN M. HALE, JR.;
TREY ANDERSON; RICHARD SAWCHAK;
FRANK YU; JOHN W. SHERIDAN; ROGER
A. NEWELL; RODNEY D. KNUTSON;
NATHANIEL KLEIN; INV-MID, LLC, a
Delaware Limited Liability Company; EREF-
MID II, LLC, a Delaware Limited Liability
Company; HCP-MID, LLC, a Delaware
Limited Liability Company; and DOES 1
through 25.

Defendants.

1 PLEASE TAKE NOTICE, Plaintiff/Appellant Daniel E. Wolfus, has filed a
2 bond for costs on appeal in the amount of \$500.00 pursuant to NRAP 7(b). A
3 true and correct copy of the bond is attached hereto.
4

5 DATED this 13th day of February 2020.
6

7 /s/ James R. Christensen

8 JAMES R. CHRISTENSEN ESQ.
9 Nevada Bar No. 3861
10 James R. Christensen PC
11 601 S. 6th St.
12 Las Vegas NV 89101
13 (702) 272-0406
14 jim@jchristensenlaw.com

15 SAMUEL T. REES ESQ.
16 Admitted Pro Hac Vice
17 26 Muirfield Place
18 New Orleans, LA 70131
19 (213) 220-9988
20 streesesq@earthlink.net

21 Attorneys for DANIEL E. WOLFUS
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I CERTIFY SERVICE of **NOTICE OF POSTING COST BOND** was made this date by electronic service (via Odyssey) to all parties currently shown on the Court's e-serve list of recipients this 13th day of February 2020.

/s/ Dawn Christensen

An employee of James R. Christensen

JAMES R. CHRISTENSEN, PC
601 South 6th Street
Las Vegas, Nevada 89101

OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor
James R Christensen Esq. PC

Receipt No.
2020-08954-CCCLK

Transaction Date
02/12/2020

Description	Amount Paid
-------------	-------------

On Behalf Of Wolfus, Daniel E.

A-17-756971-B

Daniel Wolfus, Plaintiff(s) vs. Richard Moritz, Defendant(s)

Appeal Bond

Appeal Bond

500.00

SUBTOTAL

500.00

PAYMENT TOTAL

500.00

Check (Ref #2086) Tendered

500.00

Total Tendered

500.00

Change

0.00

Notice of Appeal - filed on 2/12/2020 on behalf of Daniel Wolfus

02/12/2020
12:57 PM

Cashier
Station RJCC1

Audit
37358024

OFFICIAL RECEIPT

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-17-756971-B

Daniel Wolfus, Plaintiff(s)
vs.
Richard Moritz, Defendant(s)

§
§
§
§
§

Location: **Department 27**
 Judicial Officer: **Allf, Nancy**
 Filed on: **06/15/2017**
 Case Number History:
 Cross-Reference Case Number: **A756971**

CASE INFORMATION

Statistical Closures

11/25/2019 Motion to Dismiss by the Defendant(s)

Case Type: **Securities (NRS 90)**

Case Status: **11/25/2019 Dismissed**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-17-756971-B
 Court Department 27
 Date Assigned 08/02/2017
 Judicial Officer Allf, Nancy

PARTY INFORMATION

Plaintiff	Wolfus, Daniel E.	<i>Lead Attorneys</i> Christensen, James R. <i>Retained</i> 702-272-0406(W)
Defendant	Anderson, Trey	Ferrario, Mark E., ESQ <i>Retained</i> 702-792-3773(W)
	Blacketor, Bradley J	Cassity, Robert J. <i>Retained</i> 702-669-4600(W)
	Brunk, Kenneth A.	Smith, Jason D. <i>Retained</i> 702-648-8771(W)
	EREF-MID II LLC Removed: 06/06/2018 Dismissed	
	Haddon, Timothy	Cassity, Robert J. <i>Retained</i> 702-669-4600(W)
	Hale, Martin M, Jr.	Miltenberger, Chris <i>Retained</i> 702-792-3773(W)
	HCP-MID LLC Removed: 06/06/2018 Dismissed	
	INV-MID LLC Removed: 06/06/2018 Dismissed	
	Klein, Nathaniel	Ferrario, Mark E., ESQ <i>Retained</i>

CASE SUMMARY

CASE NO. A-17-756971-B

702-792-3773(W)

Knutson, Rodney D

Cassity, Robert J.
Retained
702-669-4600(W)

Moritz, Richard D.

Cassity, Robert J.
Retained
702-669-4600(W)

Newell, Roger A

Cassity, Robert J.
Retained
702-669-4600(W)

Sawchak, Richard









Cassity, Robert J.
Retained
702-669-4600(W)

Sheridan, John W

Cassity, Robert J.
Retained
702-669-4600(W)







Yu, Frank

Cassity, Robert J.
Retained
702-669-4600(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
	<u>EVENTS</u>	
06/15/2017	 Complaint Filed By: Plaintiff Wolfus, Daniel E. <i>Complaint for Damages</i>	
06/15/2017	 Initial Appearance Fee Disclosure Filed By: Plaintiff Wolfus, Daniel E. <i>Initial Appearance Fee Disclosure</i>	
06/15/2017	 Summons Electronically Issued - Service Pending <i>Summons</i>	
06/30/2017	 First Amended Complaint Filed By: Plaintiff Wolfus, Daniel E. <i>First Amended Complaint for Damages</i>	
06/30/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Wolfus, Daniel E. <i>First Amended Summons</i>	
07/12/2017	 Acceptance of Service Filed By: Plaintiff Wolfus, Daniel E. <i>Acceptance of Service (Moritz, Blacketor, Haddon, Sawchak, Sheridan, Yu, Newell, Knutson)</i>	
07/12/2017	 Acceptance of Service Filed By: Plaintiff Wolfus, Daniel E. <i>Acceptance of Service (Hale, Anderson, Klein, LLCs)</i>	
07/13/2017	 Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>	

CASE SUMMARY







CASE NO. A-17-756971-B

07/13/2017	 Notice of Appearance <i>Notice of Appearance</i>
07/24/2017	 Acceptance of Service Filed By: Plaintiff Wolfus, Daniel E. <i>Acceptance of Service (Brunk)</i>
07/31/2017	 Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
07/31/2017	 Notice of Appearance Party: Defendant Brunk, Kenneth A. <i>Notice of Appearance</i>
07/31/2017	 Notice of Appearance Party: Defendant Anderson, Trey; Defendant Hale, Martin M, Jr.; Defendant Klein, Nathaniel; Defendant INV-MID LLC; Defendant EREF-MID II LLC; Defendant HCP-MID LLC <i>Notice of Appearance of Counsel</i>
07/31/2017	 Initial Appearance Fee Disclosure Filed By: Defendant Anderson, Trey; Defendant Klein, Nathaniel; Defendant INV-MID LLC; Defendant EREF-MID II LLC; Defendant HCP-MID LLC <i>Initial Appearance Fee Disclosure</i>
08/01/2017	 Request to Transfer to Business Court Filed by: Defendant Anderson, Trey; Defendant Hale, Martin M, Jr.; Defendant Klein, Nathaniel; Defendant INV-MID LLC; Defendant EREF-MID II LLC; Defendant HCP-MID LLC <i>Request to Transfer to Business Court</i>
08/02/2017	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
08/24/2017	 Motion to Associate Counsel <i>Motion to Associate Counsel (Holly Stein Sollod)</i>
08/25/2017	 Motion to Dismiss Filed By: Defendant Moritz, Richard D. <i>D&O Defendants' Motion to Dismiss Amended Complaint</i>
08/25/2017	 Motion to Dismiss Filed By: Defendant Anderson, Trey; Defendant Hale, Martin M, Jr.; Defendant Klein, Nathaniel; Defendant INV-MID LLC; Defendant EREF-MID II LLC; Defendant HCP-MID LLC <i>Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Amended Complaint</i>
08/25/2017	 Motion to Dismiss Filed By: Defendant Brunk, Kenneth A. <i>Motion to Dismiss of Kenneth A. Brunk and Joinder in D&O Defendants Motion to Dismiss Amended Complaint</i>
08/28/2017	 Motion to Dismiss Filed By: Defendant Brunk, Kenneth A. <i>Motion to Dismiss of Kenneth A. Brunk and Joinder in D&O Defendants Motion to Dismiss</i>

CASE SUMMARY

CASE NO. A-17-756971-B

Amended Complaint

08/29/2017	 Notice of Change of Hearing <i>Notice of Change of Hearing</i>
09/11/2017	 Errata Filed By: Defendant Brunk, Kenneth A. <i>Errata to Motion to Dismiss of Kenneth A. Brunk and Joinder in D&O Defendants' Motion to Dismiss Amended Complaint</i>
09/18/2017	 Motion to Associate Counsel Filed By: Defendant Brunk, Kenneth A. <i>Defendant Kenneth A. Brunk's Motion to Associate Counsel</i>
09/20/2017	 Stipulation and Order Filed by: Plaintiff Wolfus, Daniel E. <i>Stipulation and Order to Continue Hearing and Filing Deadlines</i>
09/27/2017	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Wolfus, Daniel E. <i>Notice of Entry of Stipulation and Order to Continue Hearing and Filing Deadlines</i>
10/06/2017	 Opposition to Motion to Dismiss Filed By: Plaintiff Wolfus, Daniel E. <i>Consolidated Opposition to Motions to Dismiss</i>
10/12/2017	 Order Granting Filed By: Defendant Moritz, Richard D. <i>Order Granting Motion to Associate Counsel</i>
10/13/2017	 Notice of Entry of Order Filed By: Defendant Moritz, Richard D. <i>Notice of Entry of Order</i>
10/24/2017	 Motion to Associate Counsel Filed By: Plaintiff Wolfus, Daniel E. <i>Motion to Associate Counsel</i>
10/25/2017	 Reply in Support Filed By: Defendant Brunk, Kenneth A. <i>Reply in Support of Motion to Dismiss Kenneth A. Brunk and Joinder in Reply Memorandum in Support of D&O Defendants' Motion to Dismiss Amended Complaint</i>
10/25/2017	 Reply in Support Filed By: Defendant Anderson, Trey; Defendant Hale, Martin M, Jr.; Defendant Klein, Nathaniel; Defendant INV-MID LLC; Defendant EREF-MID II LLC; Defendant HCP-MID LLC <i>Reply in Support of Motion to Dismiss and Joinder to D&O Defendants Reply in Support of Motion to Dismiss Amended Complaint</i>
10/25/2017	 Reply in Support Filed By: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J; Defendant Haddon, Timothy; Defendant Sawchak, Richard; Defendant Yu, Frank; Defendant Sheridan, John W; Defendant Newell, Roger A; Defendant Knutson, Rodney D <i>Reply Memorandum In Support Of The D&O Defendants' Motion To Dismiss Amended</i>

CASE SUMMARY

CASE NO. A-17-756971-B

Complaint

11/06/2017	 Order Admitting to Practice Filed By: Defendant Brunk, Kenneth A. <i>Order Admitting to Practice</i>
11/06/2017	 Order Admitting to Practice Filed By: Defendant Brunk, Kenneth A. <i>Order Admitting to Practice</i>
11/06/2017	 Order Admitting to Practice Filed By: Defendant Brunk, Kenneth A. <i>Order Admitting to Practice</i>
11/07/2017	 Recorders Transcript of Hearing <i>Transcript of Proceedings, All Pending Motions to Dismiss and Joinders, Heard on November 1, 2017</i>
12/26/2017	 Notice Filed By: Defendant Moritz, Richard D.; Defendant Blacketer, Bradley J; Defendant Haddon, Timothy; Defendant Sawchak, Richard; Defendant Yu, Frank; Defendant Sheridan, John W; Defendant Newell, Roger A; Defendant Knutson, Rodney D <i>Notice of Submission of Proposed Order Granting Defendants' Motions to Dismiss Amended Complaint Without Prejudice</i>
12/28/2017	 Order Granting Motion Filed By: Plaintiff Wolfus, Daniel E. <i>Order Granting Plaintiff's Motion to Associate Counsel</i>
12/29/2017	 Notice Filed By: Plaintiff Wolfus, Daniel E. <i>Notice of Submission of Proposed Order(s)</i>
01/05/2018	 Order Granting Filed By: Defendant Moritz, Richard D. <i>Order Granting Defendants' Motions to Dismiss Amended Complaint Without Prejudice</i>
01/08/2018	 Notice of Entry of Order Filed By: Defendant Moritz, Richard D. <i>Notice of Entry of Order Granting Defendants' Motions to Dismiss Amended Complaint Without Prejudice</i>
01/11/2018	 Notice of Entry of Order Filed By: Plaintiff Wolfus, Daniel E. <i>Notice of Entry of Order Granting Plaintiff's Motion to Associate Counsel</i>
02/05/2018	 Second Amended Complaint Filed By: Plaintiff Wolfus, Daniel E. <i>Second Amended Complaint</i>
02/05/2018	 Summons Electronically Issued - Service Pending Party: Plaintiff Wolfus, Daniel E. <i>Second Amended Summons</i>
03/16/2018	

CASE SUMMARY

CASE NO. A-17-756971-B

	 Motion to Dismiss Filed By: Defendant Anderson, Trey; Defendant Hale, Martin M, Jr.; Defendant Klein, Nathaniel; Defendant INV-MID LLC; Defendant EREF-MID II LLC; Defendant HCP-MID LLC <i>Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Second Amended Complaint</i>
03/16/2018	 Motion to Dismiss <i>D&O Defendants' Motion to Dismiss Second Amended Complaint</i>
03/16/2018	 Motion to Dismiss Filed By: Defendant Brunk, Kenneth A. <i>Kenneth A. Brunk's Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants' Motion to Dismiss Second Amended Complaint</i>
04/18/2018	 Opposition to Motion to Dismiss Filed By: Plaintiff Wolfus, Daniel E. <i>Plaintiff's Opposition to Motion to Dismiss Second Amended Complaint</i>
05/02/2018	 Reply in Support Filed By: Defendant Brunk, Kenneth A. <i>Kenneth A. Brunk's Reply in Support of Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants' Reply in Support of Motion to Dismiss Second Amended Complaint</i>
05/02/2018	 Reply in Support Filed By: Defendant Anderson, Trey; Defendant Hale, Martin M, Jr.; Defendant Klein, Nathaniel; Defendant INV-MID LLC; Defendant EREF-MID II LLC; Defendant HCP-MID LLC <i>Reply in Support of Motion to Dismiss and Joinder to D&O Defendants Reply in Support of Motion to Dismiss Second Amended Complaint</i>
05/02/2018	 Reply <i>Reply In Support of D&O Defendants' Motion to Dismiss Second Amended Complaint</i>
05/14/2018	 Recorders Transcript of Hearing <i>Recorders Transcript Hearing All Pending Motions May 9, 2018</i>
06/01/2018	 Notice Filed By: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J; Defendant Haddon, Timothy; Defendant Sawchak, Richard <i>Notice of Submission of Proposed Order Regarding Defendants' Motions to Dismiss Second Amended Complaint</i>
06/06/2018	 Order Filed By: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J <i>Order Regarding Defendants' Motions to Dismiss Second Amended Complaint</i>
06/07/2018	 Objection Filed By: Plaintiff Wolfus, Daniel E. <i>Notice of Submission of Objections to Defendants' Proposed Order Regarding Defendants' Motions to Dismiss Second Amended Complaint</i>
06/07/2018	 Notice of Entry of Order Filed By: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J; Defendant Haddon, Timothy

CASE SUMMARY

CASE NO. A-17-756971-B

Notice of Entry of Order Regarding Defendants' Motions to Dismiss Second Amended Complaint

06/14/2018



Motion

Filed By: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J; Defendant Haddon, Timothy

Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court; Ex Parte Application for Order Shortening Time

06/15/2018



Joinder To Motion

Filed By: Defendant Brunk, Kenneth A.

Kenneth A. Brunk's Joinder in Support of D&O Defendants' Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court and Ex Parte Application for Order Shortening Time

06/19/2018



Opposition

Filed By: Plaintiff Wolfus, Daniel E.

Wolfus' Opposition to Defendants' Motion to Stay Proceedings

06/19/2018



Joinder

Filed By: Defendant Anderson, Trey; Defendant Hale, Martin M, Jr.; Defendant Klein, Nathaniel

Joinder to Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court

06/19/2018



Motion for Discovery

Filed By: Plaintiff Wolfus, Daniel E.

Plaintiff's Motion for Additional Discovery; Order Shortening Time

06/20/2018



Reply

Filed by: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J; Defendant Haddon, Timothy

Reply in Support of the D&O Defendants' Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court on OST

06/20/2018



Joinder

Filed By: Defendant Brunk, Kenneth A.

Kenneth A. Brunk s Joinder in Support of D&O Defendants Reply in Support of the D&O Defendants Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to The Nevada Supreme Court on Order Shortening Time

06/20/2018



Joinder

Filed By: Defendant Anderson, Trey; Defendant Hale, Martin M, Jr.; Defendant Klein, Nathaniel

Joinder to Reply in Support of D&O Defendants Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court

06/26/2018



Order Granting

Filed By: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J; Defendant Haddon, Timothy

Order Granting Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court

06/27/2018

















Notice of Entry of Order

Filed By: Defendant Moritz, Richard D.

Notice of Entry of Order Granting Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court

CASE SUMMARY

CASE NO. A-17-756971-B

08/24/2018	 Notice of Change of Address Filed By: Defendant Anderson, Trey; Defendant Hale, Martin M, Jr.; Defendant Klein, Nathaniel <i>Notice of Change of Firm Address</i>
09/10/2018	 Notice of Withdrawal of Attorney Filed by: Defendant Brunk, Kenneth A. <i>Notice of Withdrawal as Counsel of Record</i>
09/20/2018	 Status Report Filed By: Plaintiff Wolfus, Daniel E. <i>Plaintiff's Status Report</i>
09/21/2018	 Status Report <i>Defendants' Status Report</i>
01/17/2019	 Status Report <i>Plaintiff's Status Report</i>
01/18/2019	 Status Report <i>Defendants' Status Report</i>
03/21/2019	 Status Report Filed By: Plaintiff Wolfus, Daniel E. <i>Plaintiff's Status Report</i>
03/22/2019	 Status Report Filed By: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J; Defendant Haddon, Timothy; Defendant Sawchak, Richard; Defendant Yu, Frank; Defendant Sheridan, John W; Defendant Newell, Roger A; Defendant Knutson, Rodney D <i>Defendants' Status Report</i>
05/30/2019	 Status Report <i>Defendants' Status Report</i>
05/31/2019	 Status Report <i>Plaintiff's Status Report</i>
10/10/2019	 Status Report Filed By: Plaintiff Wolfus, Daniel E. <i>Plaintiff's Status Report</i>
10/11/2019	 Status Report Filed By: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J; Defendant Haddon, Timothy; Defendant Sawchak, Richard; Defendant Yu, Frank; Defendant Sheridan, John W; Defendant Newell, Roger A; Defendant Knutson, Rodney D <i>Defendants' Status Report</i>
11/25/2019	 Order to Statistically Close Case <i>Civil Order to Statistically Close Case</i>
11/27/2019	 Notice <i>Notice of Submission of Proposed Order Granting Defendants' Motion to Dismiss Second</i>

CASE SUMMARY

CASE NO. A-17-756971-B

Amended Complaint

12/04/2019



Notice

Notice of Submission of Proposed Final Order and Objection

01/10/2020



Order Granting Motion

Order Granting Defendants' Motions to Dismiss Second Amended Complaint

01/13/2020



Notice of Entry of Order

Notice of Entry of Order Granting Defendants' Motions to Dismiss Second Amended Complaint

01/15/2020



Memorandum of Costs and Disbursements

D&O Defendants' Verified Memorandum of Costs

01/15/2020



Appendix

Appendix of Exhibits to D&O Defendants' Verified Memorandum of Costs

02/12/2020



Notice of Appeal

Filed By: Plaintiff Wolfus, Daniel E.
Notice of Appeal

02/12/2020



Case Appeal Statement

Filed By: Plaintiff Wolfus, Daniel E.
Case Appeal Statement

02/13/2020



Notice of Posting of Cost Bond

Filed By: Plaintiff Wolfus, Daniel E.
Notice of Posting Cost Bond

DISPOSITIONS

01/05/2018

Order of Dismissal Without Prejudice (Judicial Officer: Allf, Nancy)

Debtors: Daniel E. Wolfus (Plaintiff)

Creditors: Trey Anderson (Defendant), Richard D. Moritz (Defendant), Kenneth A. Brunk (Defendant), Bradley J Blacketor (Defendant), Timothy Haddon (Defendant), Martin M Hale, Jr. (Defendant), Richard Sawchak (Defendant), Frank Yu (Defendant), John W Sheridan (Defendant), Roger A Newell (Defendant), Rodney D Knutson (Defendant), Nathaniel Klein (Defendant), INV-MID LLC (Defendant), EREF-MID II LLC (Defendant), HCP-MID LLC (Defendant)

Judgment: 01/05/2018, Docketed: 01/08/2018

Comment: First Amended Complaint for Damages

06/06/2018

Order of Dismissal With Prejudice (Judicial Officer: Allf, Nancy)

Debtors: Daniel E. Wolfus (Plaintiff)

Creditors: Trey Anderson (Defendant), Richard D. Moritz (Defendant), Kenneth A. Brunk (Defendant), Bradley J Blacketor (Defendant), Timothy Haddon (Defendant), Martin M Hale, Jr. (Defendant), Richard Sawchak (Defendant), Frank Yu (Defendant), John W Sheridan (Defendant), Roger A Newell (Defendant), Rodney D Knutson (Defendant), Nathaniel Klein (Defendant), INV-MID LLC (Defendant), EREF-MID II LLC (Defendant), HCP-MID LLC (Defendant)

Judgment: 06/06/2018, Docketed: 06/07/2018

Comment: Certain Claim

Debtors: Daniel E. Wolfus (Plaintiff)

Creditors: INV-MID LLC (Defendant), EREF-MID II LLC (Defendant), HCP-MID LLC (Defendant)

Judgment: 06/06/2018, Docketed: 06/07/2018

Comment: 2nd ACOM

CASE SUMMARY

CASE NO. A-17-756971-B

01/10/2020

Order of Dismissal With Prejudice (Judicial Officer: Allf, Nancy)

Debtors: Daniel E. Wolfus (Plaintiff)

Creditors: Richard D. Moritz (Defendant), Bradley J Blacketor (Defendant), Timothy Haddon (Defendant), Richard Sawchak (Defendant), Frank Yu (Defendant), John W Sheridan (Defendant), Roger A Newell (Defendant), Rodney D Knutson (Defendant)

Judgment: 01/10/2020, Docketed: 01/13/2020

Comment: Certain Claims

HEARINGS

09/26/2017



Motion to Associate Counsel (3:00 AM) (Judicial Officer: Allf, Nancy)

Events: 08/24/2017 Motion to Associate Counsel

Motion to Associate Counsel (Holly Stein Sollod)

MINUTES



Motion to Associate Counsel

Motion to Associate Counsel (Holly Stein Sollod)

Granted;

Journal Entry Details:

COURT FINDS after review on August 24, 2017 Defendants Moritz, Blacketor, Haddon, Saqchak, Sheridan, Yu, Newell, and Knutson filed a Motion to Associate Counsel (Holly Stein Sollod) (Motion) and the matter was set for September 26, 2017 on Chambers Calendar. COURT FURTHER FINDS after review the Motion seeks to associate Holly Stein Sollod, Esq. of the law firm of Holland & Hart LLP; the Motion is in compliance with SCR 42 and no oppositions have been filed. COURT ORDERS for good cause appearing and after review that Defendants Motion to Associate Counsel (Holly Stein Sollod) is GRANTED; the Court has reviewed the Motion, which provides cause for granting the Motion; Hearing set for CHAMBERS CALENDAR on September 26, 2017 is VACATED; Movant to submit the appropriate order. CLERK'S NOTE: A copy of this minute order was faxed to: James R. Christensen, Esq. (702-272-0415) Santoro Whitmire (702-948-8773) Moyer White LLP (303-292-4510) Greenberg Traurig, LLP (702-792-9002) Holland & Hart LLP (702-669-4650, 303-2958261) ;

10/24/2017



Motion to Associate Counsel (3:00 AM) (Judicial Officer: Allf, Nancy)

Defendant Kenneth A Brunk's Motion to Associate Counsel

Granted;

Journal Entry Details:

COURT FINDS after review that Defendant Kenneth A. Brunk filed a Motion to Associate Counsel (Motion) and a Hearing was set for October 24, 2017 on Chambers Calendar. COURT FURTHER FINDS after review the Motion seeks to associate Eric B. Liebman, Esq., Rebecca DeCook, Esq. and Rachel E. Yeates, Esq., all from the law firm of Moyer White LLP; the Motion is in compliance with SCR 42 and no oppositions have been filed. COURT ORDERS for good cause appearing and after review that Defendant Kenneth A. Brunk's Motion to Associate Counsel is GRANTED; the Court has reviewed the Motion, which provides cause for granting the Motion; Hearing set on CHAMBERS CALENDAR on October 24, 2017 is VACATED. Movant to submit the appropriate orders. CLERK'S NOTE: A copy of this minute order was faxed to: James R. Christensen, Esq. (702-272-0415) Santoro Whitmire (702-948-8773) Moyer White LLP (303-292-4510) Greenberg Traurig, LLP (702-792-9002) Holland & Hart LLP (702-669-4650, 303-2958261) ;

11/01/2017

Motion to Dismiss (10:30 AM) (Judicial Officer: Allf, Nancy)

D&O Defendant's Motion to Dismiss Amended Complaint

Continued for Chambers Decision;

11/01/2017

Motion to Dismiss (10:30 AM) (Judicial Officer: Allf, Nancy)

Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Amended Complaint

Continued for Chambers Decision;

11/01/2017

Motion to Dismiss (10:30 AM) (Judicial Officer: Allf, Nancy)

Motion to Dismiss of Kenneth A Brunk and Joinder in D&O Defendant's Motion to Dismiss Amended Complaint

Continued for Chambers Decision;

CASE SUMMARY

CASE NO. A-17-756971-B

11/01/2017

Joinder (10:30 AM) (Judicial Officer: Allf, Nancy)

Joinder in D&O Defendant's Motion to Dismiss Amended Complaint and Supplemental Motion to Dismiss of Kenneth A Brunk
Continued for Chambers Decision;

11/01/2017



All Pending Motions (10:30 AM) (Judicial Officer: Allf, Nancy)

Matter Heard;

Journal Entry Details:

D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT...MOTION TO DISMISS AND JOINDER TO D&O DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT...MOTION TO DISMISS OF KENNETH A BRUNK AND JOINDER IN D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT...JOINDER IN D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT AND SUPPLEMENTAL MOTION TO DISMISS OF KENNETH A BRUNK Arguments by Mr. Cassity, Mr. Ferrario, and Mr. Leadman regarding the merits of, and opposition to, the pending motions. COURT ORDERED, D&O Defendant's Motion to Dismiss Amended Complaint, Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Amended Complaint, Motion to Dismiss of Kenneth A Brunk and Joinder in D&O Defendant's Motion to Dismiss Amended Complaint, and Joinder in D&O Defendant's Motion to Dismiss Amended Complaint and Supplemental Motion to Dismiss of Kenneth A Brunk CONTINUED to chambers calendar for decision, Court has concerns regarding jurisdictional arguments and will reread the case law. 11/21/2017 CHAMBERS D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT; MOTION TO DISMISS AND JOINDER TO D&O DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT; MOTION TO DISMISS OF KENNETH A BRUNK AND JOINDER IN D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT; AND JOINDER IN D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT AND SUPPLEMENTAL MOTION TO DISMISS OF KENNETH A BRUNK ;

11/21/2017



Decision (3:00 AM) (Judicial Officer: Allf, Nancy)

11/21/2017, 11/29/2017

Decision: D&O Defendant's Motion to Dismiss Amended Complaint; Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Amended Complaint; Motion to Dismiss of Kenneth A Brunk and Joinder in D&O Defendant's Motion to Dismiss Amended Complaint; and Joinder in D&O Defendant's Motion to Dismiss Amended Complaint and Supplemental Motion to Dismiss of Kenneth A Brunk

Matter Continued;

Minute Order - No Hearing Held;

Journal Entry Details:

COURT FINDS after review on August 25, 2017, Defendants Richard D. Moritz, Bradley J. Blacketer, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell, and Rodney D. Knutson filed a Motion to Dismiss Amended Complaint. Defendants Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID II, LLC, and HCP-MID, LLC filed a Motion to Dismiss and Joinder to D&O Defendants Motion to Dismiss Amended Complaint. Defendant Kenneth A. Brunk filed a Motion to Dismiss of Kenneth A. Brunk and Joinder in D&O Defendants Motion to Dismiss Amended Complaint. COURT FURTHER FINDS after review these matters came on for hearing on November 1, 2017; James R. Christensen, Esq. appearing for Plaintiff Daniel E. Wolfus (Plaintiff); Robert J. Cassity, Esq. and David J. Freeman, Esq. appearing for the D&O Defendants; Mark E. Ferrario, Esq. and Christopher R. Miltenberger, Esq. appearing for the Hale Defendants; and Eric B. Liebman, Esq. and Jason D. Smith, Esq. appearing for Defendant Kenneth A. Brunk (all collectively as Defendants). COURT FURTHER FINDS after review Defendants argue the Court lacks subject matter jurisdiction because Plaintiff's claims are derivative, and under the Business Corporations Act, the Supreme Court of British Columbia has exclusive jurisdiction over derivative claims against a Canadian corporation. Moreover, Defendants argue that due to the Midway bankruptcy action the liquidating trustee has the sole right to assert derivative claims. Plaintiff counters that under the Direct Harm Test enumerated in Parametric Sound Corp., Plaintiff brings direct claims because Plaintiff individually suffered harm and any recovery will remit to Plaintiff and his assignors, not to Midway. See Parametric Sound Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 133 Nev. Adv. Op. 59, 401 P.3d 1100 (Nev. 2017). COURT FURTHER FINDS after review Plaintiff's claims are derivative in nature. Though Plaintiff frames his damages as arising from the exercise of his stock options and corresponding purchase of Midway shares, reading the Complaint as a whole indicates the alleged harm suffered comes from his shares becoming valueless after

CASE SUMMARY

CASE NO. A-17-756971-B

acquiring them. Claims premised on harm caused by the reduction in value of shares of stock are inherently derivative as the reduction arises from the reduction of the entire value of the corporation, and such an equal injury is not a specific direct harm to each shareholder individually. See *id.* THEREFORE COURT ORDERS for good cause appearing and after review Defendants Motions to Dismiss and Joinders thereto are GRANTED. The Complaint is dismissed, and Plaintiff is granted leave to amend. COURT FURTHER ORDERS for good cause appearing and after review Defendants are directed to prepare and submit an Order with detailed findings of fact and conclusions of law, allowing Plaintiff to review the Order as to form before submitting. After submission, Plaintiff will have 30 days from the Notice of Entry of Order to file a Second Amended Complaint. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve.;

Matter Continued;

Minute Order - No Hearing Held;

Journal Entry Details:

COURT FINDS after review on November 1, 2017 the Court heard argument on the Motions to Dismiss and Joinders thereto. The Court took the matters under submission and set a Status Check for November 21, 2017 on Chambers Calendar for the Court to release a Decision and Order. COURT ORDERS for good cause appearing and after review the Status Check set for Chambers Calendar on November 21, 2017, CONTINUED to December 5, 2017 on Chambers Calendar; Court will either release a Decision and Order by the December 5, 2017 Status Check, or provide a prospective future date to expect it. CONTINUED TO: 12/5/2017 (CHAMBERS) CLERK'S NOTE: A copy of this minute order was faxed to: James R. Christensen, Esq. (702-272-0415) Santoro Whitmire (702-948-8773) Moyer White LLP (303-292-4510) Greenberg Traurig, LLP (702-792-9002) Holland & Hart LLP (702-669-4650, 303-2958261);

11/28/2017



Minute Order (3:00 AM) (Judicial Officer: Allf, Nancy)

Minute Order: Motion to Associate Counsel set 12/6/2017 GRANTED and VACATED

Minute Order - No Hearing Held; Minute Order: Motion to Associate Counsel set 12/6/2017 GRANTED and VACATED

Journal Entry Details:

COURT FINDS after review on October 24, 2017 Plaintiff Daniel E. Wolfus filed a Motion to Associate Counsel (Motion) and the matter was set for December 6, 2017 at 9:30 a.m. on Motions Calendar. COURT FURTHER FINDS after review the Motion seeks to associate Samuel T. Rees, Esq. of the law firm of Samuel T. Rees, Attorney at Law; the Motion is in compliance with SCR 42 and no oppositions have been filed. COURT ORDERS for good cause appearing and after review that Plaintiff Daniel E. Wolfus s Motion to Associate Counsel for Samuel T. Rees is GRANTED; the Court has reviewed the Motion, which provides cause for granting the Motion; Hearing set for MOTIONS CALENDAR on December 6, 2017 at 9:30 a.m. is VACATED; Movant to submit the appropriate order. CLERK'S NOTE: A copy of this minute order was faxed to: James R. Christensen, Esq. (702-272-0415) Santoro Whitmire (702-948-8773) Moyer White LLP (303-292-4510) Greenberg Traurig, LLP (702-792-9002) Holland & Hart LLP (702-669-4650, 303-2958261) ;

12/06/2017

CANCELED Motion to Associate Counsel (9:30 AM) (Judicial Officer: Allf, Nancy)

Vacated - Previously Decided

05/09/2018

Motion to Dismiss (10:30 AM) (Judicial Officer: Allf, Nancy)

Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Second Amended Complaint

Granted in Part;

05/09/2018

Motion to Dismiss (10:30 AM) (Judicial Officer: Allf, Nancy)

D&O Defendant's Motion to Dismiss Second Amended Complaint

Granted in Part;

05/09/2018

Counter motion (10:30 AM) (Judicial Officer: Allf, Nancy)

Kenneth A. Brunk's Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants' Motion to Dismiss Second Amended Complaint

Granted in Part;

05/09/2018



All Pending Motions (10:30 AM) (Judicial Officer: Allf, Nancy)

CASE SUMMARY

CASE NO. A-17-756971-B

MINUTES

Matter Heard;

Journal Entry Details:

D&O DEFENDANT'S MOTION TO DISMISS SECOND AMENDED COMPLAINT...MOTION TO DISMISS AND JOINDER TO D&O DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT...KENNETH A. BRUNK'S MOTION TO DISMISS SECOND AMENDED COMPLAINT AND JOINDER IN D&O DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT Arguments by Mr. Cassity, Mr. Miltenberger, Mr. Liebman, and Mr. Christensen regarding the merits of and opposition to the pending motions. COURT ORDERED, D&O Defendant's Motion to Dismiss Second Amended Complaint; Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Second Amended Complaint; and Kenneth A. Brunk's Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants' Motion to Dismiss Second Amended Complaint TAKEN UNDER ADVISEMENT for Court to further review the briefs, matter SET for STATUS CHECK on chambers calendar. 5/22/2018 (CHAMBERS) DECISION ON D&O DEFENDANT'S MOTION TO DISMISS SECOND AMENDED COMPLAINT; .MOTION TO DISMISS AND JOINDER TO D&O DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT; AND KENNETH A. BRUNK'S MOTION TO DISMISS SECOND AMENDED COMPLAINT AND JOINDER IN D&O DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT ;

SCHEDULED HEARINGS

CANCELED Status Check (05/22/2018 at 3:00 AM) (Judicial Officer: Allf, Nancy)

Vacated

Status Check: Decision on D&O Defendant's Motion to Dismiss Second Amended Complaint; Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Second Amended Complaint and Kenneth A. Brunk's Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants' Motion to Dismiss Second Amended Complaint

05/18/2018



Minute Order (3:00 AM) (Judicial Officer: Allf, Nancy)

Decision on D&O Defendant's Motion to Dismiss Second Amended Complaint; Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Second Amended Complaint and Kenneth A. Brunk's Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants' Motion to Dismiss Second Amended Complaint

Minute Order - No Hearing Held;

Journal Entry Details:

COURT FINDS after review on March 16, 2018, Defendants Richard D. Moritz, Bradley J. Blacketer, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell, and Rodney D. Knutson filed D&O Defendants Motion to Dismiss Second Amended Complaint. Defendants Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID II, LLC, and HCP-MID, LLC filed a Motion to Dismiss and Joinder to D&O Defendants Motion to Dismiss Second Amended Complaint. Defendant Kenneth A. Brunk filed Kenneth A. Brunk s Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants Motion to Dismiss Second Amended Complaint. COURT FURTHER FINDS after review these matters came on for hearing on May 9, 2018, at which counsel presented argument. The Court being apprised of the matters and having considered the arguments of counsel, as well as the pleadings and papers on file, the matter is deemed submitted. COURT FURTHER FINDS after review the parties do not dispute that the Court has general jurisdiction over Defendant Frank Yu. COURT FURTHER FINDS after review the first cause of action is for Securities Fraud. Cal. Corp. Code 25401 provides: It is unlawful for any person to offer or sell a security in this state, or to buy or offer to buy a security in this state, by means of any written or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading. COURT FURTHER FINDS after review Cal. Corp. Code 25017(a) provides: Sale or sell includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. Sale or sell includes any exchange of securities and any change in the rights, preferences, privileges, or restrictions of or on outstanding securities. Further, Cal. Corp. Code 25017(e) provides: Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, includes an offer and sale of the other security only at the time of the offer or sale of the warrant or right or convertible security; but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of securities pursuant thereto is an offer

CASE SUMMARY**CASE NO. A-17-756971-B**

or sale. COURT FURTHER FINDS after review under the plain language of Cal. Corp. Code 25017(e), neither the exercise of the right to purchase shares nor the issuance of securities pursuant thereto is an offer or sale. The sale or offer is deemed to occur at the time of the offer or sale of the right to purchase the share. Though Plaintiff contends this provision relates to stock warrants, stock warrants are listed separately from rights to purchase and is separated by the word or, implying that the provision applies to both warrants and rights to purchase shares. Plaintiff claims the alleged misrepresentations, namely the 2013 and 2014 Material Facts impose liability on Defendants under Cal. Corp. Code 25401 for the alleged misleading sale. However, since the application of Cal. Corp. Code 25017(e) indicates the sale occurred in 2009 when the stock options were issued, and there are no allegations that the sale in 2009 contained any untrue statement of a material fact or an omission of the same. Accordingly, the Securities Fraud cause of action fails as a matter of law and is dismissed with prejudice as to all Defendants. COURT FURTHER FINDS after review the remaining causes of action Breach of Fiduciary Duty, Aiding and Abetting a Breach of Fiduciary Duty, Fraud, and Negligent Misrepresentation are sufficiently pled in the Second Amended Complaint. COURT FURTHER FINDS after review the Court finds it appropriate to determine the sufficiency of personal jurisdiction against certain remaining Defendants through jurisdictional discovery. COURT FURTHER FINDS after review because the parties do not dispute that the Court has general jurisdiction over Defendant Frank Yu, there will be no jurisdictional discovery as to determining the sufficiency of personal jurisdiction over Mr. Yu. COURT FURTHER FINDS after review Plaintiff does not oppose Defendants contention that the Court lacks personal jurisdiction over INV-MID, LLC, EREF-MID II, LLC, and HCP-MID, LLC. Further, the Second Amended Complaint alleges that these Defendants are each Delaware LLCs with principal places of business in New York. Second Am. Compl. 20. Accordingly, as there are no allegations nor showings that the Court has personal jurisdiction over these Defendants, the Complaint is dismissed with prejudice as to INV-MID, LLC, EREF-MID II, LLC, and HCP-MID, LLC. COURT ORDERS for good cause appearing and after review the parties may conduct jurisdictional discovery related to the Defendants not already addressed by this minute Order: Richard D. Moritz, Bradley J. Blacketer, Timothy Haddon, Richard Sawchak, John W. Sheridan, Roger A. Newell, Rodney D. Knutson, Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, and Kenneth A. Brunk. Jurisdictional discovery is limited to each of these Defendants contacts with Nevada related to the planning, preparation, and issuance of the SEC filings and Press Releases that predicate the Breach of Fiduciary Duty, Aiding and Abetting a Breach of Fiduciary Duty, Fraud, and Negligent Misrepresentation causes of action. COURT FURTHER ORDERS for good cause appearing and after review Plaintiff is limited to four sets of ten interrogatories per Defendant, and answers must be served within ten days of service of the interrogatories. COURT FURTHER ORDERS for good cause appearing and after review, Plaintiff is limited to four depositions lasting two hours each, per Defendant, which may occur upon not less than ten days notice. These discovery mechanisms are independent of the NRCP allowances for general discovery, yet limited to the jurisdictional issues enumerated here. The parties will initially have 90 days to complete jurisdictional discovery, with jurisdictional discovery closing August 19, 2018. Status Check SET for July 26, 2018 at 11:00 a.m. to determine the status of jurisdictional discovery. COURT FURTHER ORDERS for good cause appearing and after review, Mr. Cassity is to prepare and submit the Order in compliance with EDCR 7.21, allowing each other party the opportunity to review and approve the form prior to submission. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm;

05/22/2018

CANCELED Status Check (3:00 AM) (Judicial Officer: Allf, Nancy)

Vacated

Status Check: Decision on D&O Defendant's Motion to Dismiss Second Amended Complaint; Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Second Amended Complaint and Kenneth A. Brunk's Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants' Motion to Dismiss Second Amended Complaint

06/04/2018

**Minute Order (3:00 AM)** (Judicial Officer: Allf, Nancy)

Minute Order: Disclosure *Entered in Error*


Minute Order - No Hearing Held; Minute Order: Disclosure *ENTERED IN ERROR*

Journal Entry Details:

As the minute order from case A773230 CIMA Group LLC vs. CWNevada, LLC dated 6/5/2018 was entered in this case in error, Minutes have been AMENDED and REMOVED from this case. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm;

CASE SUMMARY

CASE NO. A-17-756971-B

06/21/2018	<p>Motion to Stay (10:00 AM) (Judicial Officer: Allf, Nancy)</p> <p><i>Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court on Order Shortening Time</i></p> <p>Granted;</p>
06/21/2018	<p>Joinder (10:00 AM) (Judicial Officer: Allf, Nancy)</p> <p><i>Kenneth A. Brunk's Joinder in Support of D&O Defendants' Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court and Ex Parte Application for Order Shortening Time</i></p> <p>Matter Heard;</p>
06/21/2018	<p>Joinder (10:00 AM) (Judicial Officer: Allf, Nancy)</p> <p><i>Joinder to Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court</i></p> <p>Matter Heard;</p>
06/21/2018	<p> All Pending Motions (10:00 AM) (Judicial Officer: Allf, Nancy)</p> <p>MINUTES</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF DEFENDANTS' WRIT PETITION TO THE NEVADA SUPREME COURT ON ORDER SHORTENING TIME...KENNETH A. BRUNK'S JOINDER IN SUPPORT OF D&O DEFENDANTS' MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF DEFENDANTS' WRIT PETITION TO THE NEVADA SUPREME COURT AND EX PARTE APPLICATION FOR ORDER SHORTENING TIME...JOINDER TO MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF DEFENDANTS WRIT PETITION TO THE NEVADA SUPREME COURT</i></p> <p><i>Eric B. Liebman, Esq., Rebecca B. DeCook, Esq., and Samuel T. Rees, Esq. present telephonically. Arguments by Mr. Cassidy, Mr. Smith, and Mr. Christensen regarding the merits of and opposition to the motion. Court stated its findings and ORDERED, Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court on Order Shortening Time GRANTED, status check SET, Court will require status reports no later than September 21, 2018, parties are required to notify the Court if writ is accepted or if there is additional briefing or IF writ is denied. COURT FURTHER ORDERED, motions set on July 5, 2018 and status check on July 26, 2018 VACATED. Mr. Cassidy to prepare the order and submit it to Plaintiff's counsel for approval. 9/25/2018 (CHAMBERS)</i></p> <p>STATUS CHECK: STATUS REPORT;</p> <p>SCHEDULED HEARINGS</p> <p> Status Check (09/25/2018 at 3:00 AM) (Judicial Officer: Allf, Nancy)</p> <p>09/25/2018, 12/04/2018, 01/22/2019, 03/26/2019, 06/04/2019, 10/15/2019</p> <p><i>Status Check: Status Report</i></p>
07/05/2018	<p>CANCELED Motion for Discovery (10:00 AM) (Judicial Officer: Allf, Nancy)</p> <p><i>Vacated</i></p> <p><i>Plaintiff's Motion for Additional Discovery on Order Shortening Time</i></p>
07/05/2018	<p>CANCELED Motion for Discovery (10:00 AM) (Judicial Officer: Allf, Nancy)</p> <p><i>Vacated</i></p> <p><i>Plaintiff's Motion for Additional Discovery; Order Shortening Time</i></p>
07/26/2018	<p>CANCELED Status Check (11:00 AM) (Judicial Officer: Allf, Nancy)</p> <p><i>Vacated</i></p>
09/25/2018	<p> Status Check (3:00 AM) (Judicial Officer: Allf, Nancy)</p> <p>09/25/2018, 12/04/2018, 01/22/2019, 03/26/2019, 06/04/2019, 10/15/2019</p> <p><i>Status Check: Status Report</i></p> <p>Matter Continued;</p> <p>Matter Continued;</p> <p>Matter Continued;</p> <p>Matter Continued;</p>

CASE SUMMARY

CASE NO. A-17-756971-B

Matter Continued;
Minute Order - No Hearing Held;
Matter Continued;
Matter Continued;
Matter Continued;
Matter Continued;
Matter Continued;
Minute Order - No Hearing Held;

Journal Entry Details:

COURT FINDS after review that on June 26, 2018 the Court entered the Order Granting Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court. Status Check was set for September 25, 2018 on Chambers Calendar to review the status of the Writ Petition and the parties were ordered to file Status Reports with the Court on or before September 21, 2018. COURT FURTHER FINDS after review that Plaintiff s Status Report was filed on September 20, 2018 and Defendant s Status Report was filed on September 21, 2018 (collectively, the Status Reports). The Status Reports indicate that the time for an answer to the Writ Petition was extended to September 26, 2018, and the time for Defendant to file a reply in support of the Writ Petition was extended to 30 days from the date of service of the answer. The Status Reports further indicate that a stay of these proceedings pending resolution of the Writ Petition is still warranted, so the Status Check was continued to December 4, 2018. COURT FURTHER FINDS after review that no Status Reports were filed prior to the December 4, 2018 Status Check, so the Status Check was continued to January 22, 2019 for the parties to file a Status Report. COURT FURTHER FINDS after review that Plaintiff s Status Report was filed with the Court on January 17, 2019 and Defendants Status Report was filed with the Court on January 18, 2019 indicating that the Writ Petition is pending before the Nevada Supreme Court and that the stay is still warranted. The Status Check was continued to March 26, 2019 for the parties to file a Status Report. COURT FURTHER FINDS after review that Plaintiff s Status Report was filed with the Court on March 21, 2019 and Defendant s Status Report was filed with the Court on March 22, 2019. Both Status Reports indicate that the Writ Petition remains pending before the Nevada Supreme Court and that oral argument is scheduled for April 2, 2019, at 10:30 a.m. The Status Check was continued to June 4, 2019 for the parties to file a Status Report. COURT FURTHER FINDS after review that the Defendant s Status Report was filed on May 30, 2019 and the Plaintiff s Status Report was filed on May 31, 2019. The status reports indicate that the Writ Petition remains pending before the Nevada Supreme Court and that the stay in this case is still warranted. COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for Chambers Calendar on June 4, 2019 is hereby CONTINUED to October 15, 2019 on CHAMBERS CALENDAR to review the status of the Writ Petition. The parties are ordered to file Status Reports with the Court on or before October 11, 2019. CONTINUED TO: 10/15/2019 (CHAMBERS) CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 6/4/2019;

Matter Continued;
Matter Continued;
Matter Continued;
Matter Continued;
Matter Continued;
Minute Order - No Hearing Held;

Journal Entry Details:

COURT FINDS after review that on June 26, 2018 the Court entered the Order Granting Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court. Status Check was set for September 25, 2018 on Chambers Calendar to review the status of the Writ Petition and the parties were ordered to file Status Reports with the Court on or before September 21, 2018. COURT FURTHER FINDS after review that Plaintiff s Status Report was filed on September 20, 2018 and Defendant s Status Report was filed on September 21, 2018 (collectively, the Status Reports). The Status Reports indicate that the time for an answer to the Writ Petition was extended to September 26, 2018, and the time for Defendant to file a reply in support of the Writ Petition was extended to 30 days from the date of service of the answer. The Status Reports further indicate that a stay of these proceedings pending resolution of the Writ Petition is still warranted, so the Status Check was continued to December 4, 2018. COURT FURTHER FINDS after review that no Status Reports were filed prior to the December 4, 2018 Status Check, so the Status Check was continued to January 22, 2019 for the parties to file a Status Report. COURT FURTHER FINDS after review that Plaintiff s Status Report was filed with the Court on January 17, 2019 and Defendants Status Report was filed with the Court on January 18, 2019 indicating that the Writ Petition is pending before the Nevada Supreme Court and that the stay is still warranted. The Status

CASE SUMMARY**CASE No. A-17-756971-B**

Check was continued to March 26, 2019 for the parties to file a Status Report. COURT FURTHER FINDS after review that Plaintiff's Status Report was filed with the Court on March 21, 2019 and Defendant's Status Report was filed with the Court on March 22, 2019. Both Status Reports indicate that the Writ Petition remains pending before the Nevada Supreme Court and that oral argument is scheduled for April 2, 2019, at 10:30 a.m. COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for Chambers Calendar on March 26, 2019 is hereby CONTINUED to June 4, 2019 on CHAMBERS CALENDAR to review the status of the Writ Petition. The parties are ordered to file Status Reports with the Court on or before May 31, 2019. CONTINUED TO: 6/4/2019 (CHAMBERS) CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 3/26/2019;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Minute Order - No Hearing Held;

Journal Entry Details:

COURT FINDS after review that on June 26, 2018 the Court entered the Order Granting Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court. Status Check was set for September 25, 2018 on Chambers Calendar to review the status of the Writ Petition and the parties were ordered to file Status Reports with the Court on or before September 21, 2018. COURT FURTHER FINDS after review that Plaintiff's Status Report was filed on September 20, 2018 and Defendant's Status Report was filed on September 21, 2018 (collectively, the Status Reports). The Status Reports indicate that the time for an answer to the Writ Petition was extended to September 26, 2018, and the time for Defendant to file a reply in support of the Writ Petition was extended to 30 days from the date of service of the answer. The Status Reports further indicate that a stay of these proceedings pending resolution of the Writ Petition is still warranted, so the Status Check was continued to December 4, 2018. COURT FURTHER FINDS after review that no Status Reports were filed prior to the December 4, 2018 Status Check, so the Status Check was continued to January 22, 2019 for the parties to file a Status Report. COURT FURTHER FINDS after review that Plaintiff's Status Report was filed with the Court on January 17, 2019 and Defendant's Status Report was filed with the Court on January 18, 2019 indicating that the Writ Petition is pending before the Nevada Supreme Court and that the stay is still warranted. COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for Chambers Calendar on January 22, 2019 is hereby CONTINUED to March 26, 2019 on CHAMBERS CALENDAR to review the status of the Writ Petition. The parties are ordered to file Status Reports with the Court on or before March 22, 2019. CONTINUED TO: 3/26/2019 (CHAMBERS) CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Minute Order - No Hearing Held;

Journal Entry Details:

COURT FINDS after review that on June 26, 2018 the Court entered the Order Granting Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court. Status Check was set for September 25, 2018 on Chambers Calendar to review the status of the Writ Petition and the parties were ordered to file Status Reports with the Court on or before September 21, 2018. COURT FURTHER FINDS after review that Plaintiff's Status Report was filed on September 20, 2018 and Defendant's Status Report was filed on September 21, 2018 (collectively, the Status Reports). The Status Reports indicate that the time for an answer to the Writ Petition was extended to September 26, 2018, and the time for Defendant to file a reply in support of the Writ Petition was extended to 30 days from the date of service of the answer. The Status Reports further indicate that a stay of these proceedings pending resolution of the Writ Petition is still warranted, so the Status Check was continued to December 4, 2018. COURT FURTHER FINDS after review that no Status Reports were filed prior to the December 4, 2018 Status Check. COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for Chambers Calendar on December 4, 2018 is hereby CONTINUED to January 22, 2019 on CHAMBERS CALENDAR to review the status of the Writ Petition. The parties are ordered to file Status Reports with the Court on or before January 18, 2019. CONTINUED TO: 1/22/2019 (CHAMBERS) CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties

CASE SUMMARY**CASE NO. A-17-756971-B***for Odyssey File & Serve. /nm;*

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Minute Order - No Hearing Held;

Journal Entry Details:

COURT FINDS after review that on June 26, 2018 the Court entered the Order Granting Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court. Status Check was set for September 25, 2018 on Chambers Calendar to review the status of the Writ Petition and the parties were ordered to file Status Reports with the Court on or before September 21, 2018. COURT FURTHER FINDS after review that Plaintiff's Status Report was filed on September 20, 2018 and Defendant's Status Report was filed on September 21, 2018 (collectively, the Status Reports). The Status Reports indicate that the time for an answer to the Writ Petition was extended to September 26, 2018, and the time for Defendant to file a reply in support of the Writ Petition was extended to 30 days from the date of service of the answer. The Status Reports further indicate that a stay of these proceedings pending resolution of the Writ Petition is still warranted. COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for Chambers Calendar on September 25, 2018 is hereby CONTINUED to December 4, 2018 on CHAMBERS CALENDAR to review the status of the Writ Petition. The parties are ordered to file Status Reports with the Court on or before November 30, 2018. CONTINUED TO 12/4/2018 (CHAMBERS) CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm;

DATE

FINANCIAL INFORMATION

Defendant Brunk, Kenneth A.

Total Charges

226.50

Total Payments and Credits

226.50

Balance Due as of 2/14/2020**0.00****Defendant** Hale, Martin M, Jr.

Total Charges

1,633.00

Total Payments and Credits

1,633.00

Balance Due as of 2/14/2020**0.00****Defendant** Moritz, Richard D.

Total Charges

520.50

Total Payments and Credits

520.50

Balance Due as of 2/14/2020**0.00****Plaintiff** Wolfus, Daniel E.

Total Charges

365.00

Total Payments and Credits

365.00

Balance Due as of 2/14/2020**0.00****Plaintiff** Wolfus, Daniel E.

Appeal Bond Balance as of 2/14/2020

500.00

DISTRICT COURT CIVIL COVER SHEET

Clark

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Defendant(s) (name/address/phone):

DANIEL E. WOLFUS

KENNETH A. BRUNK, ET.AL

Attorney (name/address/phone):

Attorney (name/address/phone):

James R. Christensen

601 S.6th Street, Las Vegas, NV 89101

(702) 272-0406

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input checked="" type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

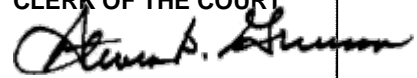
Business Court filings should be filed using the Business Court civil coversheet.

6/13/17

Date

Signature of initiating party or representative

See other side for family-related case filings.



1 **ORDG**

2 Robert J. Cassity, Esq. (9779)
3 David J. Freeman, Esq. (10045)
4 HOLLAND & HART LLP
5 9555 Hillwood Drive, 2nd Floor
6 Las Vegas, Nevada 89134
7 Tel: (702) 669-4600
8 Fax: (702) 669-4650
9 bcassity@hollandhart.com
10 dfreeman@hollandhart.com

11 Holly Stein Sollod, Esq. (Admitted *Pro Hac Vice*)
12 HOLLAND & HART LLP
13 555 17th Street, Suite 3200
14 Denver, CO 80202
15 Tel: (303) 295-8085
16 Fax: (303) 295-8261
17 hsteinsollod@hollandhart.com

18 *Attorneys for Richard D. Moritz,*
19 *Bradley J. Blacketor, Timothy Haddon,*
20 *Richard Sawchak, John W. Sheridan,*
21 *Frank Yu, Roger A. Newell and*
22 *Rodney D. Knutson.*

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 DANIEL E. WOLFUS,

26 Plaintiff,

27 v.

28 KENNETH A. BRUNK; RICHARD D.
MORITZ; BRADLEY J. BLACKETOR;
TIMOTHY HADDON; MARIN M. HALE, JR.;
TREY ANDERSON; RICHARD SAWCHAK;
FRANK YU; JOHN W. SHERIDAN; ROGER
A NEWELL; RODNEY D. KNUTSON;
NATHANIEL KLEIN; INV-MID, LLC; a
Delaware Limited Liability Company; EREF-
MID II, LLC, a Delaware Limited Liability
Company; HCP-MID, LLC, a Delaware Limited
Liability Company; and DOES 1 through 25.

Defendants.

CASE NO. : A-17-756971-B
DEPT. NO.: XXVII

**ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS SECOND
AMENDED COMPLAINT**

Electronic Filing Case

On March 16, 2018, Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson (collectively, the “D&O Defendants”) filed D&O Defendants’ Motion to Dismiss Second Amended Complaint (the “Motion”), Defendants Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID II, LLC and HCP-MID, LLC (collectively, the “Hale Defendants”) Motion to Dismiss and Joinder thereto (the “Hale Joinder”) and Defendant Kenneth A. Brunk (“Brunk”) Motion to Dismiss and Joinder thereto (the “Brunk Joinder”) (collectively, the Motion, Brunk Joinder, and Hale Joinder will be referred to as “Defendants’ Motions”), wherein the D&O Defendants, Hale Defendants and Brunk (collectively, the “Defendants”) moved the Court to dismiss the Second Amended Complaint for Damages filed by Plaintiff Daniel E. Wolfus (“Wolfus” or “Plaintiff”) on February 5, 2018 (the “Second Amended Complaint” or “SAC”).

The Defendants’ Motions came before this Court for hearing on May 9, 2018 at 10:30 a.m. Robert J. Cassity, Esq. and David J. Freeman, Esq., of the law firm HOLLAND & HART LLP, appeared on behalf of the D&O Defendants. Mark E. Ferrario, Esq. and Christopher R. Miltenberger, Esq., of the law firm GREENBERG TRAURIG, LLP, appeared on behalf of the Hale Defendants. Eric B. Liebman, Esq., of the law firm MOYE WHITE LLP, and Jason D. Smith, Esq., of the law firm SANTORO WHITMIRE, appeared on behalf of Brunk. James R. Christensen, Esq., of the law firm JAMES R. CHRISTENSEN PC, and Samuel T. Rees, Esq. appeared on behalf of Plaintiff.

On June 6, 2018, the Court entered an Order Regarding Defendants’ Motions to Dismiss. On June 12, 2018, Defendants filed a Petition for Writ of Prohibition or, Alternatively, Mandamus (the “Writ Petition”) with the Nevada Supreme Court, which was assigned Case No. 76052. In the Writ Petition, Defendants challenged the Court’s Order Regarding Defendants’ Motions to Dismiss. On July 26, 2018, the Nevada Supreme Court issued an Order Directing an Answer to the Writ Petition. On September 26, 2018, Plaintiff filed an Answer to the Writ Petition. On October 29, 2018, Defendants filed a Reply in Support of the Writ Petition. On April 2, 2019, the Nevada Supreme Court, sitting *en banc*, held oral argument on Defendants’

1 Writ Petition. On October 11, 2019, the Nevada Supreme Court issued an Order Granting
2 Petition for Writ of Prohibition, and the Supreme Court issued a Writ of Prohibition, instructing
3 this Court to vacate its Order Regarding Defendants' Motions to Dismiss and to enter an order
4 granting Defendants' Motion to Dismiss. A Notice of Lieu of Remittitur was issued on
5 November 5, 2019.

6 The Court having carefully considered the D&O Defendants' Motion, Hale Joinder, Brunk
7 Joinder, Plaintiff's Consolidated Memorandum of Points and Authorities in Opposition to
8 Motions to Dismiss, the Defendants' respective reply briefs filed in support of the Motion,
9 together with all declarations filed in support of and opposition to the Motion and Joinders,
10 including the exhibits to the declarations, the oral argument of counsel presented at the hearing
11 on this matter, and having reviewed the Nevada Supreme Court's Order Granting Petition for
12 Writ of Prohibition, having been served with the Writ of Prohibition, and in accordance with the
13 requirements of the Writ of Prohibition, issues the following Order Granting Defendants' Motions
14 to Dismiss:

15 FACTUAL ALLEGATIONS

16 1. Midway Gold Corp. ("Midway") was a publicly traded Canadian Corporation
17 incorporated under the Company Act of British Columbia, with its principal executive offices
18 located in Englewood, Colorado. *See* Pl.'s Second Am. Compl. ("SAC") ¶ 23.

19 2. Midway was engaged in the business of exploring and mining gold, primarily from
20 mines located in Nevada and Washington (*see id.* ¶¶ 24, 30), including the Pan Mine located at
21 the northern end of the Pancake mountain range in Western Pine County, Nevada (*see id.* ¶ 32).

22 3. Defendants are alleged to be former directors, officers and/or controlling persons
23 of Midway. SAC ¶¶ 8-20.

24 4. Defendants INV-MID, LLC, EREF-MID II, LLC, and HCP-MID, LLC are each
25 Delaware limited liability corporations with their principal places of business in New York. SAC
26 ¶ 20.

1 5. Plaintiff, a California resident, became an outside director of Midway in
2 November 2008 and began purchasing Midway common stock in the open market in February
3 2008. *Id.* ¶¶ 7, 26 and 29.

4 6. In 2009, Plaintiff became Chairman of the Board and the Chief Executive Officer
5 of Midway, serving in both capacities until May 18, 2012 when he was replaced by Brunk. *Id.* ¶
6 27.

7 7. Plaintiff also received stock option grants pursuant to Midway's qualified
8 employee stock option plan on January 7, 2009 and September 10, 2009. *See* Mot. Exs. H, I.

9 8. At the time Plaintiff became Chairman of the Board and CEO, Midway had
10 properties in the exploratory stage where gold mineralization had been identified (*see* SAC ¶ 30),
11 including the Pan Mine (*see id.* ¶ 32).

12 9. Prior to May 2010, Midway made the decision to convert from a purely exploration
13 company into a gold mining production company using the Pan Mine as its initial production
14 mine. *Id.* ¶ 35.

15 10. In late 2011, when Plaintiff was still Midway's Chairman and CEO, an
16 independent contractor, Gustavson Associates, completed a feasibility study on the Pan Mine,
17 which predicted over 1 million ounces of gold existed at the mine, and could be commercially
18 mined (the "2011 Pan Mine Study"). *Id.* ¶ 44; *Id.* Ex. 1 at 9.

19 11. Midway disclosed the study to the public in December 2011 (*see id.* ¶ 45), and
20 stated it was converting to a production company to bring the Pan Mine online as a profitable
21 revenue stream.

22 12. Plaintiff alleges that, by either mid or late 2013, Midway's management and its
23 board (including the D&O Defendants) knew the Pan Mine was being built and operated in ways
24 that were materially different from those assumed in the 2011 Pan Mine Study, but the Defendants
25 did not inform investors of the material impact on cash flows as a result of those differences. *Id.*
26 ¶ 65.

27 13. Specifically, Plaintiff alleges the Defendants failed to disclose that Midway (a)
28 was unable to raise sufficient cash to complete the Pan Mine project in the manner set forth in the

2011 Pan Mine Study, as well as fund on-going operations until the Pan Mine project produced sufficient revenues to cover these expenses, and (b) did not seek the proper permits and did not have the necessary facilities to process the gold solution once leaching was completed, and there would be a considerable delay before the facilities were constructed and permitted for operations. *Id.* ¶¶ 65, 86.

14. On January 23, 2014, Plaintiff exercised stock options to acquire 200,000 shares at \$0.56/share for \$112,000 Canadian Dollars (\$100,636 USD). *Id.* ¶ 69.

15. On September 19, 2014, Plaintiff exercised his stock option to acquire 1,000,000 shares at \$0.86/share for \$860,000 Canadian Dollars (\$783,778 USD). Plaintiff's acquisition of shares was also a result of his exercising certain of his qualified employee stock options. *Id.* ¶¶ 87, 88, 89.

16. Plaintiff has asserted claims against Defendants arising out of the Defendants' alleged failure to disclose certain facts regarding the progress (or lack thereof) of the Pan Mine project prior to Plaintiff's stock option exercises in 2014.

17. Plaintiff alleges that had he known these undisclosed facts, he would not have exercised his stock options in either January 2014 or September 2014. Plaintiff also alleges that he and his family were induced to hold their stock when, had they known the material facts, they would have sold their stock when Midway's stock price reached its peak on February 28, 2014. *See* SAC ¶¶ 106, 111, 114, 117, 124, 130, 131, 144-145.

18. Plaintiff alleged that he relied on these allegedly misleading statements in exercising his stock options, which were subsequently rendered worthless by Midway's bankruptcy. *See* SAC ¶¶ 95-96.

CONCLUSIONS OF LAW

19. When a plaintiff fails to "state a claim upon which relief can be granted," the Court must dismiss the claim upon motion under NRCP 12(b)(5). "In considering a motion to dismiss pursuant to NRCP 12(b)(5) the court accepts a plaintiff's factual allegations as true, but the allegations must be legally sufficient to constitute the elements of the claims asserted." *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009) (citation

1 omitted). “To survive dismissal, a complaint must contain some ‘set of facts, which, if true, would
2 entitle the plaintiff to relief.’” *In re Amerco Derivative Litig.*, 127 Nev. 196, 211, 252 P.3d 681,
3 692 (2011) (citation omitted). “Dismissal is proper where the allegations are insufficient to
4 establish the elements of a claim for relief.” *Stockmeier v. Nevada Dep’t of Corr.*, 124 Nev. 313,
5 316, 183 P.3d 133, 135 (2008) (citations omitted).

6 20. Plaintiff’s first cause of action is for Securities Fraud under the California
7 Corporate Securities Act. Cal. Corp. Code § 25401 provides: “It is unlawful for any person to
8 offer or sell a security in this state, or to buy or offer to buy a security in this state, by means of
9 any written or oral communication that includes an untrue statement of a material fact or omits to
10 state a material fact necessary to make the statements made, in the light of the circumstances
11 under which the statements were made, not misleading.”

12 21. Cal. Corp. Code § 25017(a) provides: “Sale or sell includes every contract of sale
13 of, contract to sell, or disposition of, a security or interest in a security for value. Sale or sell
14 includes any exchange of securities and any change in the rights, preferences, privileges, or
15 restrictions of or on outstanding securities.”

16 22. Further, Cal. Corp. Code § 25017(e) provides: “Every sale or offer of a warrant or
17 right to purchase or subscribe to another security of the same or another issuer, as well as every
18 sale or offer of a security which gives the holder a present or future right or privilege to convert
19 the security into another security of the same or another issuer, includes an offer and sale of the
20 other security only at the time of the offer or sale of the warrant or right or convertible security;
21 but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of
22 securities pursuant thereto is an offer or sale.”

23 23. After review of the plain language of Cal. Corp. Code § 25017(e), the Court
24 concludes that neither the exercise of the right to purchase shares nor the issuance of securities
25 pursuant thereto is an offer or sale. The sale or offer is deemed to occur at the time of the offer
26 or sale of the right to purchase the share.

1 24. Although Plaintiff contends this provision relates to stock warrants, stock warrants
2 are listed separately from rights to purchase and is separated by the word “or,” implying that the
3 provision applies to both warrants and rights to purchase shares.

4 25. Plaintiff claims the alleged misrepresentations, namely the 2013 and 2014 Material
5 Facts impose liability on Defendants under Cal. Corp. Code § 25401 for the alleged misleading
6 sale. However, the application of Cal. Corp. Code § 25017(e) indicates that the sale occurred in
7 2009 when the stock options were issued, and there are no allegations that the sale in 2009 was
8 based upon any untrue statement of a material fact or an omission of the same. Accordingly, the
9 California Securities Fraud cause of action fails as a matter of law and is subject to dismissal with
10 prejudice as to all Defendants.

11 26. With regard to Plaintiffs’ claims, “[t]he question whether a suit is derivative by
12 nature or may be brought by a shareholder in his own right is governed by the law of the state of
13 incorporation” *Kennedy v. Venrock Assocs.*, 348 F.3d 584, 589-90 (7th Cir. 2003); *see also*
14 *Kepley v. Lanz*, 715 F.3d 969, 972-73 (6th Cir. 2013).

15 27. As Midway Gold is a British Columbian corporation, the test British Columbian
16 courts apply when evaluating whether a claim is direct or derivative is whether “the gravamen of
17 the cause of action alleged [arises] as a result of wrongs done to the company. . . . If the damage
18 that flows is a direct result of the wrongs done to the company, then those damages can only be
19 claimed by the company.” *Robak Indus. Ltd. v. Gardner*, 2006 CarswellBC 2533, para. 5 (Can.
20 B.C.S.C.) (WL).

21 28. In making this determination, the courts in that jurisdiction examine “the nature of
22 the damages suffered as alleged in the pleadings.” *Id.* at para. 13; *see also Luft v. Ball*, 2013
23 CarswellBC 820, para. 34 (Can. B.C.S.C.) (WL) (“In order for a complaining shareholder to
24 maintain a personal action for breach of duties owed to the company, that shareholder must show
25 that he or she has suffered damage or loss in a manner distinct from other shareholders.”).

26 29. The Nevada Supreme Court recently adopted Delaware’s “direct harm” test for
27 distinguishing between derivative and direct shareholder claims in *Parametric Sound*, 133 Nev.
28 at 427, 401 P.3d at 1108. In order to determine whether a shareholder claim is direct or derivative,

1 the court must consider: “(1) who suffered the alleged harm (the corporation or the suing
2 stockholders, individually); and (2) who would receive the benefit of any recovery or other
3 remedy (the corporation or the stockholders, individually)?” *Id.* (quoting *Tooley*, 845 A.2d at
4 1033).

5 30. Pursuant to the direct harm test, the relevant inquiry in addressing who suffered
6 the alleged harm is: “Looking at the body of the complaint and considering the nature of the
7 wrong alleged and the relief requested, has the plaintiff demonstrated that he or she can prevail
8 without showing an injury to the corporation. *Parametric Sound*, 133 Nev. at 426, 401 P.3d at
9 1107-08 (quoting *Tooley*, 845 A.2d at 1036). Applying the direct harm test as set forth in
10 *Parametric Sound*, Wolfus’s fiduciary duty claims are derivative because he has not demonstrated
11 a harm that is independent of the injury to Midway as a corporation.

12 31. The gravamen of Wolfus’s Second Amended Complaint is the Directors’ alleged
13 mismanagement of Midway, specifically, mismanagement in the form of failing to secure
14 sufficient capital for the Pan project, deciding not to sell assets to create necessary capital, and
15 purportedly allowing a certain Director to “tak[e] effective control of Midway and the Pan project
16 even though” Wolfus contends that Director “lacked the ability to manage the Pan project.”
17 Wolfus also alleges the Directors failed to appropriately employ supervisory staff for the Pan
18 project, which delayed production. Further, Wolfus alleges the Pan project failed because the
19 Directors, rather than cut costs to purchase necessary equipment, “decided not to purchase this
20 necessary equipment” and instead purchased equipment for which the company had not secured
21 the appropriate permits. These alleged acts of mismanagement and imprudent investment
22 decisions impaired or prevented what Wolfus describes in his Second Amended Complaint as the
23 “two major events” required for the Pan project to succeed: Midway securing necessary permits
24 and securing necessary financing for the project. SAC ¶ 46.

25 32. The Court concludes, based on the body of his Second Amended Complaint and
26 the nature of his claims, that Wolfus’s breach of fiduciary duty claims describe a derivative action
27 based on the Directors’ alleged mismanagement of Midway. His Second Amended Complaint
28 merely reflects an unavailing attempt to characterize the derivative claim as a direct claim

1 personal to him. Such an effort does not alter the nature of his claims. *See Kramer v. W. Pac.*
2 *Indus., Inc.*, 546 A.2d 348, 352-53 (Del. 1988) (holding that where the gravamen of a
3 stockholder's complaint is director mismanagement, the cause of action is derivative in nature).
4 Notwithstanding his attempt to characterize his claims as direct, the essence of Wolfus's claims
5 allege harm to Midway from which injury resulted indirectly to each of Midway's shareholders.
6 Accordingly, Wolfus's breach of fiduciary duty claims are derivative and he lacks standing to
7 pursue them.

8 33. Wolfus argues that California common law, as set forth in *Small v. Fritz Cos.*, 65
9 P.3d 1255 (Cal. 2003), permits him to assert claims for fraud and negligent misrepresentation
10 directly. Regardless of how Wolfus purports to characterize these claims, however, he has simply
11 repackaged his fiduciary duty claims under different labels. Here, Wolfus attempts to frame his
12 cause of action as one for fraud and negligent misrepresentation, but the claims are based on what
13 the Directors purportedly should have disclosed about their management of Midway. The
14 underlying nature of Wolfus's fraud and negligent misrepresentation claims are derivative as they
15 are dependent on alleged injuries to Midway.

16 34. Wolfus's Second Amended Complaint alleges that, had he known of the
17 purportedly undisclosed facts the Directors withheld, Wolfus "would have sold all of his Midway
18 shares . . . in February 2014 when Midway's stock price began to fall from its peak." The nature
19 of the harm alleged here cannot be understood apart from the decline in Midway's stock value
20 which ostensibly resulted from the Directors' purported mismanagement. The decline in
21 Midway's stock value did not result from any misrepresentation or omission, but from the
22 Directors' alleged failure to successfully manage the Pan project. Generally, such an allegation
23 will sustain a derivative action, not an action for direct injury to the shareholder. *See, e.g., Rivers*
24 *v. Wachovia Corp.*, 665 F.3d 610, 614-15 (4th Cir. 2011) ("The well-established general rule is
25 that shareholders cannot pursue individual causes of action against third parties for wrongs or
26 injuries to the corporation that result in the diminution or destruction of the value of their stock."
27 (internal quotation marks omitted); *Smith v. Waste Mgmt., Inc.*, 407 F.3d 381, 384-85 (5th Cir.
28 2005) (concluding a shareholder's claims for fraud and negligent misrepresentation were

1 derivative because alleged corporate misrepresentations that “caus[e] a decline in the company’s
2 share price when the truth is revealed,” injure the corporation directly and the shareholders only
3 indirectly.); *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998) (concluding a shareholder’s
4 allegations of breach of fiduciary duty and corporate mismanagement “describe[d] a direct injury
5 to the bank, not the individual stockholders,” and allegations of “depreciation of stock value
6 [were] an indirect result of the injury to [the bank] which resulted in its closure”).

7 35. Even if the Court were to entertain Wolfus’s argument that his claims for fraud
8 and misrepresentation allege direct harm personal to him, his pleading would be inadequate
9 pursuant to the very authority upon which he relies, specifically, the decision in *Small v. Fritz*
10 *Cos.*, 65 P.3d 1255, 1265 (Cal. 2003).

11 36. Having determined that Wolfus’s claims against the Directors are derivative in
12 nature, as allegations of mismanagement which harmed Midway directly, the Court concludes the
13 law of British Columbia, where Midway was incorporated, controls Wolfus’s claims. *Vaughn v.*
14 *Le nnt’l, Inc.*, 94 Cal. Rptr. 3d 166, 175 (Ct. App. 2009) (“Under the internal affairs doctrine, the
15 rights of shareholders in a foreign company, including the right to sue derivatively, are determined
16 by the law of the place where the company is incorporated.” (internal quotation marks omitted)).

17 37. British Columbia law requires a corporate shareholder to apply for leave of the
18 court of that jurisdiction before filing a derivative action, and requires the shareholder to provide
19 notice of such application to the company and demand that the directors take remedial action prior
20 to commencement of the suit. Business Corporations Act, R.S.B.C. 2002, c. 57 §§ 232(2)(a) &
21 233(1)(a)-(b). The failure to obtain leave of court is fatal under British Columbia common law.
22 *Bruneau v. Irwin Indus. (1978) Ltd.*, 2002 CarswellIBC 1107, para. 19 (Can. B.C.S.C.) (WL)
23 (“[W]here an action [is] in fact a derivative action but commenced without leave, the appropriate
24 remedy [is] to strike it as disclosing no reasonable claim.”).

25 38. Wolfus concedes that if his claims are derivative, they are also subject to an
26 effective pre-suit demand requirement which he failed to satisfy. Failure to comply with such a
27 requirement is equally fatal to his complaint. *Vaughn*, 94 Cal. Rptr. 3d at 171-72 (holding a pre-
28

1 suit demand requirement imposed by the British Virgin Islands Business Companies Act of 2004
2 imposed a substantive requirement determining whether a shareholder had standing to sue).

3 39. Wolfus also lacks standing to pursue derivative claims on behalf of Midway as a
4 result of Midway's bankruptcy, over which the estate's trustee has exclusive standing to litigate.
5 11 U.S.C. §§ 323, 541; *Estate of Spirtos v. One San Bernardino Cty. Superior Court Case No.*
6 *SPR 02211*, 443 F.3d 1172, 1176 (9th Cir. 2006) ("The bankruptcy code endows the bankruptcy
7 trustee with the exclusive right to sue on behalf of the estate."); *Delgado Oil Co. v. Torres*, 785
8 F.2d 857, 860 (10th Cir. 1986) (explaining that the bankruptcy estate of a corporate debtor
9 includes any derivative right of action the corporation may have to recover damages for
10 misconduct, mismanagement, or neglect of duty by a corporate officer or director).

11 **ORDER**

12 Based on the foregoing, and good cause appearing,

13 IT IS HEREBY ORDERED that the Court's Order Regarding Defendants' Motion to
14 Dismiss dated June 6, 2018 is VACATED;

15 IT IS FURTHER ORDERED that Defendants' Motions are GRANTED as to Plaintiff's
16 Claim for Securities Fraud, which is hereby DISMISSED with prejudice.

17 IT IS FURTHER ORDERED that Defendants' Motions are GRANTED as to Plaintiff's
18 Claim for Breach of Fiduciary Duty, which is hereby DISMISSED with prejudice.

19 IT IS FURTHER ORDERED that Defendants' Motions are GRANTED as to Plaintiff's
20 Claim for Aiding and Abetting Breach of Fiduciary Duty, which is hereby DISMISSED with
21 prejudice.

22 IT IS FURTHER ORDERED that Defendants' Motions are GRANTED as to Plaintiff's
23 Claim for Fraud, which is hereby DISMISSED with prejudice.

24 ///

25 ///

26 ///

27 ///

28 ///

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 222-2500 ♦ Fax: (702) 669-4650

1 IT IS FURTHER ORDERED that Defendants' Motions are GRANTED as to Plaintiff's
2 Claim for Negligent Misrepresentation, which is hereby DISMISSED with prejudice.

3 IT IS SO ORDERED.

4 DATED this 9 day of Jan 2020 ~~December 2019~~.

5
6 Nancy L. Alf
DISTRICT COURT JUDGE

7 JD

8 Respectfully submitted by:

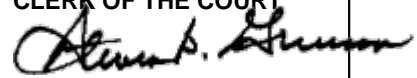
9 Robert J. Cassity

10 Robert J. Cassity, Esq. (9779)
11 David J. Freeman, Esq. (10045)
HOLLAND & HART LLP
12 9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

13
14 Holly Stein Sollod, Esq. (Admitted *Pro Hac Vice*)
HOLLAND & HART LLP
15 555 17th Street, Suite 3200
Denver, CO 80202

16 *Attorneys for Richard D. Moritz,*
17 *Bradley J. Blacketer, Timothy Haddon,*
18 *Richard Sawchak, John W. Sheridan,*
19 *Frank Yu, Roger A. Newell and*
Rodney D. Knutson

20 13844471_v1
21
22
23
24
25
26
27
28



1 **NEOJ**

2 Robert J. Cassity, Esq. (9779)
3 David J. Freeman, Esq. (10045)
4 HOLLAND & HART LLP
5 9555 Hillwood Drive, 2nd Floor
6 Las Vegas, Nevada 89134
7 Tel: (702) 669-4600
8 Fax: (702) 669-4650
9 bcassity@hollandhart.com
10 dfreeman@hollandhart.com

11 Holly Stein. Sollod, Esq. (*Admitted Pro Hac Vice*)
12 HOLLAND & HART LLP
13 555 17th Street, Suite 3200
14 Denver, CO 80202
15 Tel: (303) 295-8085
16 Fax: (303) 295-8261
17 hsteinsollod@hollandhart.com

18 *Attorneys for Richard D. Moritz,*
19 *Bradley J. Blacketor, Timothy Haddon,*
20 *Richard Sawchak, John W. Sheridan,*
21 *Frank Yu, Roger A. Newell and*
22 *Rodney D. Knutson.*

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 DANIEL E. WOLFUS, ,

26 Plaintiff,

27 v.

28 KENNETH A. BRUNK; RICHARD D.
MORITZ; BRADLEY J. BLACKETOR;
TIMOTHY HADDON; MARIN M. HALE, JR.;
TREY ANDERSON; RICHARD SAWCHAK;
FRANK YU; JOHN W. SHERIDAN; ROGER
A NEWELL; RODNEY D. KNUTSON;
NATHANIEL KLEIN; INV-MID, LLC; a
Delaware Limited Liability Company; EREF-
MID II, LLC, a Delaware Limited Liability
Company; HCP-MID, LLC, a Delaware Limited
Liability Company; and DOES 1 through 25.

Defendants.

CASE NO. : A-17-756971-B
DEPT. NO.: XXVII

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANTS' MOTIONS
TO DISMISS SECOND AMENDED
COMPLAINT**

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 222-2500 ♦ Fax: (702) 669-4650

1 PLEASE TAKE NOTICE that an Order Granting Defendants' Motions to Dismiss
2 Second Amended Complaint was entered on the 10th day of January 2020. A copy is attached.

3 DATED this 13th day of January 2020.
4

5 By /s/ Robert J. Cassity

6 Robert J. Cassity, Esq. (9779)
7 David J. Freeman, Esq. (10045)
8 HOLLAND & HART LLP
9 9555 Hillwood Drive, 2nd Floor
10 Las Vegas, Nevada 89134

11 Holly Stein. Sollod, Esq.
12 *(Admitted Pro Hac Vice)*
13 HOLLAND & HART LLP
14 555 17th Street, Suite 3200
15 Denver, CO 80202

16 *Attorneys for Richard D. Moritz,*
17 *Bradley J. Blacketor, Timothy Haddon,*
18 *Richard Sawchak, John W. Sheridan,*
19 *Frank Yu, Roger A. Newell and*
20 *Rodney D. Knutson.*
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of January 2020, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS SECOND AMENDED COMPLAINT** was served by the following method(s):

☒ **Electronic:** by submitting electronically for filing and/or service with the Eighth Judicial District Court's Odyssey eFileNV Electronic Filing system and serving all parties with an email address on record, as indicated below, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. That date and time of the electronic proof of service in place of the date and place of deposit in the U.S. Mail.

James R. Christensen, Esq.
JAMES R. CHRISTENSEN PC
601 S. 6th St.
Las Vegas, NV 89101
jim@jchristensenlaw.com

Attorneys for Plaintiff

Mark E. Ferrario, Esq.
Christopher Miltenberger, Esq.
GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive, Ste 600
Las Vegas, NV 89135
ferrariom@gtlaw.com
miltenbergerc@gtlaw.com

*Attorneys for Martin M. Hale, Jr. Trey
Anderson, Nathaniel Klein, INV-MID, LLC,
EREF-MID II, LLC, and HCP-MID, LLC*

Jason D. Smith, Esq.
SANTORO WHIMIRE
10100 W. Charleston Blvd., #250
Las Vegas, Nevada 89135
Email: jsmith@santoronevada.com

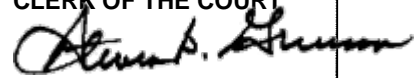
Attorneys for Kenneth A. Brunk

☒ **U.S. Mail:** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Eric B. Liebman, Esq.
Rebecca DeCook, Esq.
MOYE WHITE LLP
16 Market Square, 6th Floor
1400 16th Street
Denver, CO 80202

Attorneys for Kenneth A. Brunk

/s/ Valerie Larsen
An Employee of Holland & Hart LLP



1 **ORDG**

2 Robert J. Cassity, Esq. (9779)
3 David J. Freeman, Esq. (10045)
4 HOLLAND & HART LLP
5 9555 Hillwood Drive, 2nd Floor
6 Las Vegas, Nevada 89134
7 Tel: (702) 669-4600
8 Fax: (702) 669-4650
9 bcassity@hollandhart.com
10 dfreeman@hollandhart.com

11 Holly Stein Sollod, Esq. (Admitted *Pro Hac Vice*)
12 HOLLAND & HART LLP
13 555 17th Street, Suite 3200
14 Denver, CO 80202
15 Tel: (303) 295-8085
16 Fax: (303) 295-8261
17 hsteinsollod@hollandhart.com

18 *Attorneys for Richard D. Moritz,*
19 *Bradley J. Blacketor, Timothy Haddon,*
20 *Richard Sawchak, John W. Sheridan,*
21 *Frank Yu, Roger A. Newell and*
22 *Rodney D. Knutson.*

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 DANIEL E. WOLFUS,

26 Plaintiff,

27 v.

28 KENNETH A. BRUNK; RICHARD D.
MORITZ; BRADLEY J. BLACKETOR;
TIMOTHY HADDON; MARIN M. HALE, JR.;
TREY ANDERSON; RICHARD SAWCHAK;
FRANK YU; JOHN W. SHERIDAN; ROGER
A NEWELL; RODNEY D. KNUTSON;
NATHANIEL KLEIN; INV-MID, LLC; a
Delaware Limited Liability Company; EREF-
MID II, LLC, a Delaware Limited Liability
Company; HCP-MID, LLC, a Delaware Limited
Liability Company; and DOES 1 through 25.

Defendants.

CASE NO. : A-17-756971-B
DEPT. NO.: XXVII

**ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS SECOND
AMENDED COMPLAINT**

Electronic Filing Case

On March 16, 2018, Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson (collectively, the “D&O Defendants”) filed D&O Defendants’ Motion to Dismiss Second Amended Complaint (the “Motion”), Defendants Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID II, LLC and HCP-MID, LLC (collectively, the “Hale Defendants”) Motion to Dismiss and Joinder thereto (the “Hale Joinder”) and Defendant Kenneth A. Brunk (“Brunk”) Motion to Dismiss and Joinder thereto (the “Brunk Joinder”) (collectively, the Motion, Brunk Joinder, and Hale Joinder will be referred to as “Defendants’ Motions”), wherein the D&O Defendants, Hale Defendants and Brunk (collectively, the “Defendants”) moved the Court to dismiss the Second Amended Complaint for Damages filed by Plaintiff Daniel E. Wolfus (“Wolfus” or “Plaintiff”) on February 5, 2018 (the “Second Amended Complaint” or “SAC”).

The Defendants’ Motions came before this Court for hearing on May 9, 2018 at 10:30 a.m. Robert J. Cassity, Esq. and David J. Freeman, Esq., of the law firm HOLLAND & HART LLP, appeared on behalf of the D&O Defendants. Mark E. Ferrario, Esq. and Christopher R. Miltenberger, Esq., of the law firm GREENBERG TRAURIG, LLP, appeared on behalf of the Hale Defendants. Eric B. Liebman, Esq., of the law firm MOYE WHITE LLP, and Jason D. Smith, Esq., of the law firm SANTORO WHITMIRE, appeared on behalf of Brunk. James R. Christensen, Esq., of the law firm JAMES R. CHRISTENSEN PC, and Samuel T. Rees, Esq. appeared on behalf of Plaintiff.

On June 6, 2018, the Court entered an Order Regarding Defendants’ Motions to Dismiss. On June 12, 2018, Defendants filed a Petition for Writ of Prohibition or, Alternatively, Mandamus (the “Writ Petition”) with the Nevada Supreme Court, which was assigned Case No. 76052. In the Writ Petition, Defendants challenged the Court’s Order Regarding Defendants’ Motions to Dismiss. On July 26, 2018, the Nevada Supreme Court issued an Order Directing an Answer to the Writ Petition. On September 26, 2018, Plaintiff filed an Answer to the Writ Petition. On October 29, 2018, Defendants filed a Reply in Support of the Writ Petition. On April 2, 2019, the Nevada Supreme Court, sitting *en banc*, held oral argument on Defendants’

1 Writ Petition. On October 11, 2019, the Nevada Supreme Court issued an Order Granting
2 Petition for Writ of Prohibition, and the Supreme Court issued a Writ of Prohibition, instructing
3 this Court to vacate its Order Regarding Defendants' Motions to Dismiss and to enter an order
4 granting Defendants' Motion to Dismiss. A Notice of Lieu of Remittitur was issued on
5 November 5, 2019.

6 The Court having carefully considered the D&O Defendants' Motion, Hale Joinder, Brunk
7 Joinder, Plaintiff's Consolidated Memorandum of Points and Authorities in Opposition to
8 Motions to Dismiss, the Defendants' respective reply briefs filed in support of the Motion,
9 together with all declarations filed in support of and opposition to the Motion and Joinders,
10 including the exhibits to the declarations, the oral argument of counsel presented at the hearing
11 on this matter, and having reviewed the Nevada Supreme Court's Order Granting Petition for
12 Writ of Prohibition, having been served with the Writ of Prohibition, and in accordance with the
13 requirements of the Writ of Prohibition, issues the following Order Granting Defendants' Motions
14 to Dismiss:

15 FACTUAL ALLEGATIONS

16 1. Midway Gold Corp. ("Midway") was a publicly traded Canadian Corporation
17 incorporated under the Company Act of British Columbia, with its principal executive offices
18 located in Englewood, Colorado. *See* Pl.'s Second Am. Compl. ("SAC") ¶ 23.

19 2. Midway was engaged in the business of exploring and mining gold, primarily from
20 mines located in Nevada and Washington (*see id.* ¶¶ 24, 30), including the Pan Mine located at
21 the northern end of the Pancake mountain range in Western Pine County, Nevada (*see id.* ¶ 32).

22 3. Defendants are alleged to be former directors, officers and/or controlling persons
23 of Midway. SAC ¶¶ 8-20.

24 4. Defendants INV-MID, LLC, EREF-MID II, LLC, and HCP-MID, LLC are each
25 Delaware limited liability corporations with their principal places of business in New York. SAC
26 ¶ 20.

1 5. Plaintiff, a California resident, became an outside director of Midway in
2 November 2008 and began purchasing Midway common stock in the open market in February
3 2008. *Id.* ¶¶ 7, 26 and 29.

4 6. In 2009, Plaintiff became Chairman of the Board and the Chief Executive Officer
5 of Midway, serving in both capacities until May 18, 2012 when he was replaced by Brunk. *Id.* ¶
6 27.

7 7. Plaintiff also received stock option grants pursuant to Midway's qualified
8 employee stock option plan on January 7, 2009 and September 10, 2009. *See* Mot. Exs. H, I.

9 8. At the time Plaintiff became Chairman of the Board and CEO, Midway had
10 properties in the exploratory stage where gold mineralization had been identified (*see* SAC ¶ 30),
11 including the Pan Mine (*see id.* ¶ 32).

12 9. Prior to May 2010, Midway made the decision to convert from a purely exploration
13 company into a gold mining production company using the Pan Mine as its initial production
14 mine. *Id.* ¶ 35.

15 10. In late 2011, when Plaintiff was still Midway's Chairman and CEO, an
16 independent contractor, Gustavson Associates, completed a feasibility study on the Pan Mine,
17 which predicted over 1 million ounces of gold existed at the mine, and could be commercially
18 mined (the "2011 Pan Mine Study"). *Id.* ¶ 44; *Id.* Ex. 1 at 9.

19 11. Midway disclosed the study to the public in December 2011 (*see id.* ¶ 45), and
20 stated it was converting to a production company to bring the Pan Mine online as a profitable
21 revenue stream.

22 12. Plaintiff alleges that, by either mid or late 2013, Midway's management and its
23 board (including the D&O Defendants) knew the Pan Mine was being built and operated in ways
24 that were materially different from those assumed in the 2011 Pan Mine Study, but the Defendants
25 did not inform investors of the material impact on cash flows as a result of those differences. *Id.*
26 ¶ 65.

27 13. Specifically, Plaintiff alleges the Defendants failed to disclose that Midway (a)
28 was unable to raise sufficient cash to complete the Pan Mine project in the manner set forth in the

2011 Pan Mine Study, as well as fund on-going operations until the Pan Mine project produced sufficient revenues to cover these expenses, and (b) did not seek the proper permits and did not have the necessary facilities to process the gold solution once leaching was completed, and there would be a considerable delay before the facilities were constructed and permitted for operations. *Id.* ¶¶ 65, 86.

14. On January 23, 2014, Plaintiff exercised stock options to acquire 200,000 shares at \$0.56/share for \$112,000 Canadian Dollars (\$100,636 USD). *Id.* ¶ 69.

15. On September 19, 2014, Plaintiff exercised his stock option to acquire 1,000,000 shares at \$0.86/share for \$860,000 Canadian Dollars (\$783,778 USD). Plaintiff's acquisition of shares was also a result of his exercising certain of his qualified employee stock options. *Id.* ¶¶ 87, 88, 89.

16. Plaintiff has asserted claims against Defendants arising out of the Defendants' alleged failure to disclose certain facts regarding the progress (or lack thereof) of the Pan Mine project prior to Plaintiff's stock option exercises in 2014.

17. Plaintiff alleges that had he known these undisclosed facts, he would not have exercised his stock options in either January 2014 or September 2014. Plaintiff also alleges that he and his family were induced to hold their stock when, had they known the material facts, they would have sold their stock when Midway's stock price reached its peak on February 28, 2014. *See* SAC ¶¶ 106, 111, 114, 117, 124, 130, 131, 144-145.

18. Plaintiff alleged that he relied on these allegedly misleading statements in exercising his stock options, which were subsequently rendered worthless by Midway's bankruptcy. *See* SAC ¶¶ 95-96.

CONCLUSIONS OF LAW

19. When a plaintiff fails to "state a claim upon which relief can be granted," the Court must dismiss the claim upon motion under NRCP 12(b)(5). "In considering a motion to dismiss pursuant to NRCP 12(b)(5) the court accepts a plaintiff's factual allegations as true, but the allegations must be legally sufficient to constitute the elements of the claims asserted." *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009) (citation

1 omitted). “To survive dismissal, a complaint must contain some ‘set of facts, which, if true, would
2 entitle the plaintiff to relief.’” *In re Amerco Derivative Litig.*, 127 Nev. 196, 211, 252 P.3d 681,
3 692 (2011) (citation omitted). “Dismissal is proper where the allegations are insufficient to
4 establish the elements of a claim for relief.” *Stockmeier v. Nevada Dep’t of Corr.*, 124 Nev. 313,
5 316, 183 P.3d 133, 135 (2008) (citations omitted).

6 20. Plaintiff’s first cause of action is for Securities Fraud under the California
7 Corporate Securities Act. Cal. Corp. Code § 25401 provides: “It is unlawful for any person to
8 offer or sell a security in this state, or to buy or offer to buy a security in this state, by means of
9 any written or oral communication that includes an untrue statement of a material fact or omits to
10 state a material fact necessary to make the statements made, in the light of the circumstances
11 under which the statements were made, not misleading.”

12 21. Cal. Corp. Code § 25017(a) provides: “Sale or sell includes every contract of sale
13 of, contract to sell, or disposition of, a security or interest in a security for value. Sale or sell
14 includes any exchange of securities and any change in the rights, preferences, privileges, or
15 restrictions of or on outstanding securities.”

16 22. Further, Cal. Corp. Code § 25017(e) provides: “Every sale or offer of a warrant or
17 right to purchase or subscribe to another security of the same or another issuer, as well as every
18 sale or offer of a security which gives the holder a present or future right or privilege to convert
19 the security into another security of the same or another issuer, includes an offer and sale of the
20 other security only at the time of the offer or sale of the warrant or right or convertible security;
21 but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of
22 securities pursuant thereto is an offer or sale.”

23 23. After review of the plain language of Cal. Corp. Code § 25017(e), the Court
24 concludes that neither the exercise of the right to purchase shares nor the issuance of securities
25 pursuant thereto is an offer or sale. The sale or offer is deemed to occur at the time of the offer
26 or sale of the right to purchase the share.

1 24. Although Plaintiff contends this provision relates to stock warrants, stock warrants
2 are listed separately from rights to purchase and is separated by the word “or,” implying that the
3 provision applies to both warrants and rights to purchase shares.

4 25. Plaintiff claims the alleged misrepresentations, namely the 2013 and 2014 Material
5 Facts impose liability on Defendants under Cal. Corp. Code § 25401 for the alleged misleading
6 sale. However, the application of Cal. Corp. Code § 25017(e) indicates that the sale occurred in
7 2009 when the stock options were issued, and there are no allegations that the sale in 2009 was
8 based upon any untrue statement of a material fact or an omission of the same. Accordingly, the
9 California Securities Fraud cause of action fails as a matter of law and is subject to dismissal with
10 prejudice as to all Defendants.

11 26. With regard to Plaintiffs’ claims, “[t]he question whether a suit is derivative by
12 nature or may be brought by a shareholder in his own right is governed by the law of the state of
13 incorporation” *Kennedy v. Venrock Assocs.*, 348 F.3d 584, 589-90 (7th Cir. 2003); *see also*
14 *Kepley v. Lanz*, 715 F.3d 969, 972-73 (6th Cir. 2013).

15 27. As Midway Gold is a British Columbian corporation, the test British Columbian
16 courts apply when evaluating whether a claim is direct or derivative is whether “the gravamen of
17 the cause of action alleged [arises] as a result of wrongs done to the company. . . . If the damage
18 that flows is a direct result of the wrongs done to the company, then those damages can only be
19 claimed by the company.” *Robak Indus. Ltd. v. Gardner*, 2006 CarswellBC 2533, para. 5 (Can.
20 B.C.S.C.) (WL).

21 28. In making this determination, the courts in that jurisdiction examine “the nature of
22 the damages suffered as alleged in the pleadings.” *Id.* at para. 13; *see also Luft v. Ball*, 2013
23 CarswellBC 820, para. 34 (Can. B.C.S.C.) (WL) (“In order for a complaining shareholder to
24 maintain a personal action for breach of duties owed to the company, that shareholder must show
25 that he or she has suffered damage or loss in a manner distinct from other shareholders.”).

26 29. The Nevada Supreme Court recently adopted Delaware’s “direct harm” test for
27 distinguishing between derivative and direct shareholder claims in *Parametric Sound*, 133 Nev.
28 at 427, 401 P.3d at 1108. In order to determine whether a shareholder claim is direct or derivative,

1 the court must consider: “(1) who suffered the alleged harm (the corporation or the suing
2 stockholders, individually); and (2) who would receive the benefit of any recovery or other
3 remedy (the corporation or the stockholders, individually)?” *Id.* (quoting *Tooley*, 845 A.2d at
4 1033).

5 30. Pursuant to the direct harm test, the relevant inquiry in addressing who suffered
6 the alleged harm is: “Looking at the body of the complaint and considering the nature of the
7 wrong alleged and the relief requested, has the plaintiff demonstrated that he or she can prevail
8 without showing an injury to the corporation. *Parametric Sound*, 133 Nev. at 426, 401 P.3d at
9 1107-08 (quoting *Tooley*, 845 A.2d at 1036). Applying the direct harm test as set forth in
10 *Parametric Sound*, Wolfus’s fiduciary duty claims are derivative because he has not demonstrated
11 a harm that is independent of the injury to Midway as a corporation.

12 31. The gravamen of Wolfus’s Second Amended Complaint is the Directors’ alleged
13 mismanagement of Midway, specifically, mismanagement in the form of failing to secure
14 sufficient capital for the Pan project, deciding not to sell assets to create necessary capital, and
15 purportedly allowing a certain Director to “tak[e] effective control of Midway and the Pan project
16 even though” Wolfus contends that Director “lacked the ability to manage the Pan project.”
17 Wolfus also alleges the Directors failed to appropriately employ supervisory staff for the Pan
18 project, which delayed production. Further, Wolfus alleges the Pan project failed because the
19 Directors, rather than cut costs to purchase necessary equipment, “decided not to purchase this
20 necessary equipment” and instead purchased equipment for which the company had not secured
21 the appropriate permits. These alleged acts of mismanagement and imprudent investment
22 decisions impaired or prevented what Wolfus describes in his Second Amended Complaint as the
23 “two major events” required for the Pan project to succeed: Midway securing necessary permits
24 and securing necessary financing for the project. SAC ¶ 46.

25 32. The Court concludes, based on the body of his Second Amended Complaint and
26 the nature of his claims, that Wolfus’s breach of fiduciary duty claims describe a derivative action
27 based on the Directors’ alleged mismanagement of Midway. His Second Amended Complaint
28 merely reflects an unavailing attempt to characterize the derivative claim as a direct claim

1 personal to him. Such an effort does not alter the nature of his claims. *See Kramer v. W. Pac.*
2 *Indus., Inc.*, 546 A.2d 348, 352-53 (Del. 1988) (holding that where the gravamen of a
3 stockholder's complaint is director mismanagement, the cause of action is derivative in nature).
4 Notwithstanding his attempt to characterize his claims as direct, the essence of Wolfus's claims
5 allege harm to Midway from which injury resulted indirectly to each of Midway's shareholders.
6 Accordingly, Wolfus's breach of fiduciary duty claims are derivative and he lacks standing to
7 pursue them.

8 33. Wolfus argues that California common law, as set forth in *Small v. Fritz Cos.*, 65
9 P.3d 1255 (Cal. 2003), permits him to assert claims for fraud and negligent misrepresentation
10 directly. Regardless of how Wolfus purports to characterize these claims, however, he has simply
11 repackaged his fiduciary duty claims under different labels. Here, Wolfus attempts to frame his
12 cause of action as one for fraud and negligent misrepresentation, but the claims are based on what
13 the Directors purportedly should have disclosed about their management of Midway. The
14 underlying nature of Wolfus's fraud and negligent misrepresentation claims are derivative as they
15 are dependent on alleged injuries to Midway.

16 34. Wolfus's Second Amended Complaint alleges that, had he known of the
17 purportedly undisclosed facts the Directors withheld, Wolfus "would have sold all of his Midway
18 shares . . . in February 2014 when Midway's stock price began to fall from its peak." The nature
19 of the harm alleged here cannot be understood apart from the decline in Midway's stock value
20 which ostensibly resulted from the Directors' purported mismanagement. The decline in
21 Midway's stock value did not result from any misrepresentation or omission, but from the
22 Directors' alleged failure to successfully manage the Pan project. Generally, such an allegation
23 will sustain a derivative action, not an action for direct injury to the shareholder. *See, e.g., Rivers*
24 *v. Wachovia Corp.*, 665 F.3d 610, 614-15 (4th Cir. 2011) ("The well-established general rule is
25 that shareholders cannot pursue individual causes of action against third parties for wrongs or
26 injuries to the corporation that result in the diminution or destruction of the value of their stock."
27 (internal quotation marks omitted); *Smith v. Waste Mgmt., Inc.*, 407 F.3d 381, 384-85 (5th Cir.
28 2005) (concluding a shareholder's claims for fraud and negligent misrepresentation were

1 derivative because alleged corporate misrepresentations that “caus[e] a decline in the company’s
2 share price when the truth is revealed,” injure the corporation directly and the shareholders only
3 indirectly.); *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998) (concluding a shareholder’s
4 allegations of breach of fiduciary duty and corporate mismanagement “describe[d] a direct injury
5 to the bank, not the individual stockholders,” and allegations of “depreciation of stock value
6 [were] an indirect result of the injury to [the bank] which resulted in its closure”).

7 35. Even if the Court were to entertain Wolfus’s argument that his claims for fraud
8 and misrepresentation allege direct harm personal to him, his pleading would be inadequate
9 pursuant to the very authority upon which he relies, specifically, the decision in *Small v. Fritz*
10 *Cos.*, 65 P.3d 1255, 1265 (Cal. 2003).

11 36. Having determined that Wolfus’s claims against the Directors are derivative in
12 nature, as allegations of mismanagement which harmed Midway directly, the Court concludes the
13 law of British Columbia, where Midway was incorporated, controls Wolfus’s claims. *Vaughn v.*
14 *Le nnt’l, Inc.*, 94 Cal. Rptr. 3d 166, 175 (Ct. App. 2009) (“Under the internal affairs doctrine, the
15 rights of shareholders in a foreign company, including the right to sue derivatively, are determined
16 by the law of the place where the company is incorporated.” (internal quotation marks omitted)).

17 37. British Columbia law requires a corporate shareholder to apply for leave of the
18 court of that jurisdiction before filing a derivative action, and requires the shareholder to provide
19 notice of such application to the company and demand that the directors take remedial action prior
20 to commencement of the suit. Business Corporations Act, R.S.B.C. 2002, c. 57 §§ 232(2)(a) &
21 233(1)(a)-(b). The failure to obtain leave of court is fatal under British Columbia common law.
22 *Bruneau v. Irwin Indus. (1978) Ltd.*, 2002 CarswellBC 1107, para. 19 (Can. B.C.S.C.) (WL)
23 (“[W]here an action [is] in fact a derivative action but commenced without leave, the appropriate
24 remedy [is] to strike it as disclosing no reasonable claim.”).

25 38. Wolfus concedes that if his claims are derivative, they are also subject to an
26 effective pre-suit demand requirement which he failed to satisfy. Failure to comply with such a
27 requirement is equally fatal to his complaint. *Vaughn*, 94 Cal. Rptr. 3d at 171-72 (holding a pre-
28

1 suit demand requirement imposed by the British Virgin Islands Business Companies Act of 2004
2 imposed a substantive requirement determining whether a shareholder had standing to sue).

3 39. Wolfus also lacks standing to pursue derivative claims on behalf of Midway as a
4 result of Midway's bankruptcy, over which the estate's trustee has exclusive standing to litigate.
5 11 U.S.C. §§ 323, 541; *Estate of Spirtos v. One San Bernardino Cty. Superior Court Case No.*
6 *SPR 02211*, 443 F.3d 1172, 1176 (9th Cir. 2006) ("The bankruptcy code endows the bankruptcy
7 trustee with the exclusive right to sue on behalf of the estate."); *Delgado Oil Co. v. Torres*, 785
8 F.2d 857, 860 (10th Cir. 1986) (explaining that the bankruptcy estate of a corporate debtor
9 includes any derivative right of action the corporation may have to recover damages for
10 misconduct, mismanagement, or neglect of duty by a corporate officer or director).

11 **ORDER**

12 Based on the foregoing, and good cause appearing,

13 IT IS HEREBY ORDERED that the Court's Order Regarding Defendants' Motion to
14 Dismiss dated June 6, 2018 is VACATED;

15 IT IS FURTHER ORDERED that Defendants' Motions are GRANTED as to Plaintiff's
16 Claim for Securities Fraud, which is hereby DISMISSED with prejudice.

17 IT IS FURTHER ORDERED that Defendants' Motions are GRANTED as to Plaintiff's
18 Claim for Breach of Fiduciary Duty, which is hereby DISMISSED with prejudice.

19 IT IS FURTHER ORDERED that Defendants' Motions are GRANTED as to Plaintiff's
20 Claim for Aiding and Abetting Breach of Fiduciary Duty, which is hereby DISMISSED with
21 prejudice.

22 IT IS FURTHER ORDERED that Defendants' Motions are GRANTED as to Plaintiff's
23 Claim for Fraud, which is hereby DISMISSED with prejudice.

24 ///

25 ///

26 ///

27 ///

28 ///

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 222-2500 ♦ Fax: (702) 669-4650

1 IT IS FURTHER ORDERED that Defendants' Motions are GRANTED as to Plaintiff's
2 Claim for Negligent Misrepresentation, which is hereby DISMISSED with prejudice.

3 IT IS SO ORDERED.

4 DATED this 9 day of Jan 2020 ~~December 2019~~.

5
6 Nancy L. Alf
DISTRICT COURT JUDGE

7 JD

8 Respectfully submitted by:

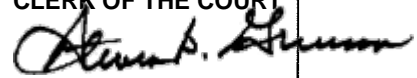
9 Robert J. Cassity

10 Robert J. Cassity, Esq. (9779)
11 David J. Freeman, Esq. (10045)
12 HOLLAND & HART LLP
13 9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

14 Holly Stein Sollod, Esq. (Admitted *Pro Hac Vice*)
15 HOLLAND & HART LLP
16 555 17th Street, Suite 3200
Denver, CO 80202

17 *Attorneys for Richard D. Moritz,*
18 *Bradley J. Blacketer, Timothy Haddon,*
19 *Richard Sawchak, John W. Sheridan,*
Frank Yu, Roger A. Newell and
Rodney D. Knutson

20 13844471_v1
21
22
23
24
25
26
27
28



ORDR

Robert J. Cassity, Esq. (9779)
David J. Freeman, Esq. (10045)
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Tel: (702) 669-4600
Fax: (702) 669-4650
bcassity@hollandhart.com
dfreeman@hollandhart.com

Holly Stein Sollod, Esq. (*Pro Hac Vice*)
HOLLAND & HART LLP
555 17th Street, Suite 3200
Denver, CO 80202
Tel: (303) 295-8085
Fax: (303) 295-8261
hsteinsollod@hollandhart.com

*Attorneys for Richard D. Moritz,
Bradley J. Blacketor, Timothy Haddon,
Richard Sawchak, John W. Sheridan,
Frank Yu, Roger A. Newell and
Rodney D. Knutson.*

DISTRICT COURT
CLARK COUNTY, NEVADA

DANIEL E. WOLFUS,
Plaintiff,
v.

CASE NO.: A-17-756971-B
DEPT. NO.: XXVII

KENNETH A. BRUNK; RICHARD D.
MORITZ; BRADLEY J. BLACKETOR;
TIMOTHY HADDON; MARIN M. HALE, JR.;
TREY ANDERSON; RICHARD SAWCHAK;
FRANK YU; JOHN W. SHERIDAN; ROGER
A NEWELL; RODNEY D. KNUTSON;
NATHANIEL KLEIN; INV-MID, LLC; a
Delaware Limited Liability Company; EREF-
MID II, LLC, a Delaware Limited Liability
Company; HCP-MID, LLC, a Delaware Limited
Liability Company; and DOES 1 through 25.
Defendants.

**ORDER REGARDING DEFENDANTS'
MOTIONS TO DISMISS SECOND
AMENDED COMPLAINT**

Electronic Filing Case

This matter came before this Court for hearing on May 9, 2018 at 10:30 a.m., on
Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John

1 W. Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson (collectively, the “D&O
2 Defendants”) *D&O Defendants’ Motion to Dismiss Second Amended Complaint* (the “Motion”),
3 Defendants Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID
4 II, LLC and HCP-MID, LLC (collectively, the “Hale Defendants”) *Motion to Dismiss and Joinder*
5 thereto (the “Hale Joinder”) and Defendant Kenneth A. Brunk (“Brunk”) *Motion to Dismiss and*
6 *Joinder* thereto (the “Brunk Joinder”), wherein the D&O Defendants, Hale Defendants and Brunk
7 (collectively, the “Defendants”) moved this Court to dismiss the *Second Amended Complaint for*
8 *Damages* filed by Plaintiff Daniel E. Wolfus (“Wolfus” or “Plaintiff”) on February 5, 2018 (the
9 “Second Amended Complaint” or “SAC”).

10 Robert J. Cassity, Esq. and David J. Freeman, Esq., of the law firm HOLLAND & HART
11 LLP, appeared on behalf of the D&O Defendants. Mark E. Ferrario, Esq. and Christopher R.
12 Miltenberger, Esq., of the law firm GREENBERG TRAURIG, LLP, appeared on behalf of the Hale
13 Defendants. Eric B. Liebman, Esq., of the law firm MOYE WHITE LLP, and Jason D. Smith, Esq.,
14 of the law firm SANTORO WHITMIRE, appeared on behalf of Brunk. James R. Christensen, Esq.,
15 of the law firm JAMES R. CHRISTENSEN PC, and Samuel T. Rees, Esq. appeared on behalf of
16 Plaintiff.

17 Having carefully considered the D&O Defendants’ Motion, Hale Joinder, Brunk Joinder,
18 Plaintiff’s *Consolidated Memorandum of Points and Authorities in Opposition to Motions to*
19 *Dismiss*, the Defendants’ respective reply briefs filed in support of the Motion, together with all
20 declarations filed in support of and opposition to the Motion and Joinders, including the exhibits
21 to the declarations, the oral argument of counsel presented at the hearing on this matter, and good
22 cause appearing, the Court decides the submitted issues as follows:

23 FACTUAL ALLEGATIONS

24 1. Midway Gold Corp. (“Midway”) was a publicly traded Canadian Corporation
25 incorporated under the Company Act of British Columbia, with its principal executive offices
26 located in Englewood, Colorado. SAC ¶ 23.

1 2. Midway was engaged in the business of exploring and mining gold, primarily from
2 mines located in Nevada and Washington (*see id.* ¶¶ 24, 30), including the Pan Mine located at
3 the northern end of the Pancake mountain range in Western Pine County, Nevada (*see id.* ¶ 32).

4 3. Defendants are alleged to be former directors, officers and/or controlling persons
5 of Midway. SAC ¶¶ 8-20. Defendants INV-MID, LLC, EREF-MID II, LLC, and HCP-MID,
6 LLC are each Delaware limited liability corporations with their principal places of business in
7 New York. SAC ¶ 20.

8 4. Plaintiff, a California resident, became an outside director of Midway in
9 November 2008 and began purchasing Midway common stock in the open market in February
10 2008. *Id.* ¶¶ 7, 26 and 29.

11 5. In 2009, Plaintiff became Chairman of the Board and the Chief Executive Officer
12 of Midway, serving in both capacities until May 18, 2012 when he was replaced by Brunk. *Id.* ¶
13 27.

14 6. Plaintiff also received stock option grants pursuant to Midway's qualified
15 employee stock option plan on January 7, 2009 and September 10, 2009. *See* Mot. Exs. H, I.

16 7. At the time Plaintiff became Chairman of the Board and CEO, Midway had
17 properties in the exploratory stage where gold mineralization had been identified (*see* Compl. at
18 ¶ 30), including the Pan Mine (*see id.* ¶ 32).

19 8. Prior to May 2010, Midway made the decision to convert from a purely exploration
20 company into a gold mining production company using the Pan Mine as its initial production
21 mine. *Id.* ¶ 35.

22 9. In late 2011, when Plaintiff was still Midway's Chairman and CEO, an
23 independent contractor, Gustavson Associates, completed a feasibility study on the Pan Mine,
24 which predicted over 1 million ounces of gold existed at the mine, and could be commercially
25 mined (the "2011 Pan Mine Study"). *Id.* ¶ 44; *Id.* Ex. 1 at 9.

1 10. Midway disclosed the study to the public in December 2011 (*see id.* ¶ 45), and
2 stated it was converting to a production company to bring the Pan Mine online as a profitable
3 revenue stream.

4 11. Plaintiff alleges that, by either mid or late 2013, Midway's management and its
5 board (including the D&O Defendants) knew the Pan Mine was being built and operated in ways
6 that were materially different from those assumed in the 2011 Pan Mine Study, but the Defendants
7 did not inform investors of the material impact on cash flows as a result of those differences. *Id.*
8 ¶ 65.

9 12. Specifically, Plaintiff alleges the Defendants failed to disclose that Midway (a)
10 was unable to raise sufficient cash to complete the Pan Mine project in the manner set forth in the
11 2011 Pan Mine Study, as well as fund on-going operations until the Pan Mine project produced
12 sufficient revenues to cover these expenses, and (b) did not seek the proper permits and did not
13 have the necessary facilities to process the gold solution once leaching was completed, and there
14 would be a considerable delay before the facilities were constructed and permitted for operations.
15 *Id.* ¶¶ 65, 86.

16 13. On January 23, 2014, Plaintiff exercised stock options by purchasing 200,000
17 shares at \$0.56/share for \$112,000 Canadian Dollars (\$100,636 USD). *Id.* ¶ 69.

18 14. On September 19, 2014, Plaintiff exercised his stock option by purchasing
19 1,000,000 shares at \$0.86/share for \$860,000 Canadian Dollars (\$783,778 USD). Plaintiff's
20 purchase was also as a result of his exercising certain of his qualified employee stock options. *Id.*
21 ¶¶ 87, 88, 89.

22 15. Plaintiff has asserted claims against Defendants arising out of the Defendants'
23 alleged failure to disclose certain facts regarding the progress (or lack thereof) of the Pan Mine
24 project prior to Plaintiff's stock option exercises in 2014.

25 16. Plaintiff alleges that had he known these undisclosed facts, he would not have
26 exercised his stock options in either January 2014 or September 2014. Plaintiff also alleges that
27 he and his family were induced to hold their stock when, had they known the material facts, they
28

1 would have sold their stock when Midway's stock price reached its peak on February 28, 2014.
2 See Compl. ¶¶ 106, 111, 114, 117, 124, 130, 131, 144-145.

3 CONCLUSIONS OF LAW

4 17. When a plaintiff fails to "state a claim upon which relief can be granted," the Court
5 must dismiss the claim upon motion under NRCP 12(b)(5). "In considering a motion to dismiss
6 pursuant to NRCP 12(b)(5) the court accepts a plaintiff's factual allegations as true, but the
7 allegations must be legally sufficient to constitute the elements of the claims asserted." *Sanchez*
8 *ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009) (citation
9 omitted). "To survive dismissal, a complaint must contain some 'set of facts, which, if true, would
10 entitle the plaintiff to relief.'" *In re Amerco Derivative Litig.*, 127 Nev. 196, 211, 252 P.3d 681,
11 692 (2011) (citation omitted). "Dismissal is proper where the allegations are insufficient to
12 establish the elements of a claim for relief." *Stockmeier v. Nevada Dep't of Corr.*, 124 Nev. 313,
13 316, 183 P.3d 133, 135 (2008) (citations omitted).

14 18. Plaintiff's first cause of action is for Securities Fraud under the California
15 Corporate Securities Act. Cal. Corp. Code § 25401 provides: "It is unlawful for any person to
16 offer or sell a security in this state, or to buy or offer to buy a security in this state, by means of
17 any written or oral communication that includes an untrue statement of a material fact or omits to
18 state a material fact necessary to make the statements made, in the light of the circumstances
19 under which the statements were made, not misleading."

20 19. Cal. Corp. Code § 25017(a) provides: "Sale or sell includes every contract of sale
21 of, contract to sell, or disposition of, a security or interest in a security for value. Sale or sell
22 includes any exchange of securities and any change in the rights, preferences, privileges, or
23 restrictions of or on outstanding securities."

24 20. Further, Cal. Corp. Code § 25017(e) provides: "Every sale or offer of a warrant or
25 right to purchase or subscribe to another security of the same or another issuer, as well as every
26 sale or offer of a security which gives the holder a present or future right or privilege to convert
27 the security into another security of the same or another issuer, includes an offer and sale of the
28

1 other security only at the time of the offer or sale of the warrant or right or convertible security;
2 but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of
3 securities pursuant thereto is an offer or sale.”

4 21. After review of the plain language of Cal. Corp. Code § 25017(e), the Court
5 concludes that neither the exercise of the right to purchase shares nor the issuance of securities
6 pursuant thereto is an offer or sale. The sale or offer is deemed to occur at the time of the offer
7 or sale of the right to purchase the share.

8 22. Although Plaintiff contends this provision relates to stock warrants, stock warrants
9 are listed separately from rights to purchase and is separated by the word “or,” implying that the
10 provision applies to both warrants and rights to purchase shares.

11 23. Plaintiff claims the alleged misrepresentations, namely the 2013 and 2014 Material
12 Facts impose liability on Defendants under Cal. Corp. Code § 25401 for the alleged misleading
13 sale. However, the application of Cal. Corp. Code § 25017(e) indicates that the sale occurred in
14 2009 when the stock options were issued, and there are no allegations that the sale in 2009 was
15 based upon any untrue statement of a material fact or an omission of the same. Accordingly, the
16 California Securities Fraud cause of action fails as a matter of law and is subject to dismissal with
17 prejudice as to all Defendants.

18 24. The Court further finds that the remaining causes of action Breach of Fiduciary
19 Duty, Aiding and Abetting a Breach of Fiduciary Duty, Fraud, and Negligent Misrepresentation
20 are sufficiently pled in the Second Amended Complaint.

21 25. Defendants, with the exception of Frank Yu, have also moved for dismissal on the
22 basis of lack of personal jurisdiction pursuant to NRCP 12(b)(2).

23 26. Rule 12(b)(2) of the Nevada Rules of Civil Procedure (“NRCP”) allows a party to
24 seek dismissal of a complaint for lack of personal jurisdiction. NRCP 12(b)(2); *Trump v. District*
25 *Court*, 109 Nev. 687, 693, 857 P.2d 740, 744 (1993).

26 27. The Court may exercise general personal jurisdiction over a defendant when the
27 defendant’s contacts with the State of Nevada are so “substantial” or “continuous and systematic”
28

1 such that hailing them into court would be reasonable as they may be deemed to be present within
2 this state. *Budget Rent-A-Car v. Eighth Judicial Dist. Court*, 108 Nev. 483, 485, 835 P.2d 17, 19
3 (1992).

4 28. Alternatively, the Court may exercise specific personal jurisdiction over a
5 defendant where: (1) purposefully availed itself of the privilege of acting within the state or of
6 causing important consequences in the state; (2) the cause of action arises from defendant's
7 purposeful contacts with the forum state; and (3) those contacts with the forum state were
8 substantial enough to make the exercise of jurisdiction over the defendant reasonable. *Consipio*
9 *Holding, BV v. Carlberg*, 128 Nev. Adv. Op. 43, 282 P.3d 751, 755 (2012).

10 29. The Court determined that Plaintiff does not oppose Defendants' contention that
11 the Court lacks personal jurisdiction over INV-MID, LLC, EREF-MID II, LLC, and HCP-MID,
12 LLC. These Defendants are each Delaware LLCs with principal places of business in New York.
13 SAC ¶ 20.

14 30. This Court cannot exercise general personal jurisdiction over Defendants INV-
15 MID, LLC, EREF-MID II, LLC and HCP-MID, LLC, as Plaintiff has not alleged such jurisdiction
16 nor has he made any such showing supporting the exercise of such jurisdiction.

17 31. Defendants INV-MID, LLC, EREF-MID II, LLC and HCP-MID, LLC have not
18 purposefully availed themselves of the privilege of acting within this State or causing any
19 important consequences within this State.

20 32. Plaintiff's causes of action do not arise from any of Defendants INV-MID, LLC,
21 EREF-MID II, LLC and HCP-MID, LLC's purposeful contacts with this State.

22 33. It would be unreasonable to exercise specific personal jurisdiction over
23 Defendants INV-MID, LLC, EREF-MID II, LLC and HCP-MID, LLC under these
24 circumstances.

25 34. Accordingly, as there are no allegations nor showings that the Court has personal
26 jurisdiction over these Defendants, the Complaint is dismissed with prejudice as to INV-MID,
27 LLC, EREF-MID II, LLC, and HCP-MID, LLC.

1 filings and Press Releases that predicate the Breach of Fiduciary Duty, Aiding and Abetting a
2 Breach of Fiduciary Duty, Fraud, and Negligent Misrepresentation causes of action, as follows:

3 1. Plaintiff is limited to four sets of ten interrogatories (i.e., Plaintiff may serve four
4 separate defendants with a set of ten interrogatories), and answers must be served within ten days
5 of service of the interrogatories.

6 2. Plaintiff is limited to four depositions lasting two hours each (i.e., Plaintiff may
7 take depositions of four defendants, each lasting up to two hours), which depositions may occur
8 upon not less than ten days' notice.

9 3. These discovery mechanisms are independent of the Nevada Rules of Civil
10 Procedure allowances for general discovery, yet shall be limited to the jurisdictional issues
11 enumerated herein.

12 4. The parties will initially have 90 days to complete jurisdictional discovery, with
13 jurisdictional discovery closing on August 19, 2018.

14 ///

15 ///

16 ///

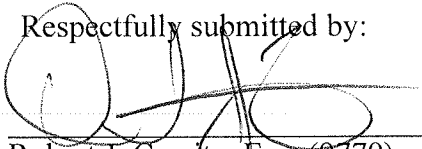
1 IT IS FURTHER ORDERED that a Status Check is hereby set for July 26, 2018 at 11:00
2 a.m. to determine the status of jurisdictional discovery.

3 IT IS SO ORDERED.

4 DATED this 6th day of June 2018.

5 Nancy Alf
6 DISTRICT COURT JUDGE

7 Respectfully submitted by:

8 

9 Robert J. Cassity, Esq. (9779)

10 David J. Freeman, Esq. (10045)

11 HOLLAND & HART LLP

12 9555 Hillwood Drive, 2nd Floor

13 Las Vegas, Nevada 89134

14 Holly Stein. Sollod, Esq. (*Admitted Pro Hac Vice*)

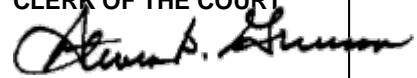
15 HOLLAND & HART LLP

16 555 17th Street, Suite 3200

17 Denver, CO 80202

18 *Attorneys for Richard D. Moritz,*
19 *Bradley J. Blacketer, Timothy Haddon,*
20 *Richard Sawchak, John W. Sheridan,*
21 *Frank Yu, Roger A. Newell and*
22 *Rodney D. Knutson*

23 11006715_4
24
25
26
27
28



1 **NEOJ**

2 Robert J. Cassity, Esq. (9779)
3 David J. Freeman, Esq. (10045)
4 HOLLAND & HART LLP
5 9555 Hillwood Drive, 2nd Floor
6 Las Vegas, Nevada 89134
7 Tel: (702) 669-4600
8 Fax: (702) 669-4650
9 bcassity@hollandhart.com
10 dfreeman@hollandhart.com

11 Holly Stein. Sollod, Esq. (*Admitted Pro Hac Vice*)
12 HOLLAND & HART LLP
13 555 17th Street, Suite 3200
14 Denver, CO 80202
15 Tel: (303) 295-8085
16 Fax: (303) 295-8261
17 hsteinsollod@hollandhart.com

18 *Attorneys for Richard D. Moritz,*
19 *Bradley J. Blacketor, Timothy Haddon,*
20 *Richard Sawchak, John W. Sheridan,*
21 *Frank Yu, Roger A. Newell and*
22 *Rodney D. Knutson.*

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 DANIEL E. WOLFUS, ,

26 Plaintiff,

27 v.

28 KENNETH A. BRUNK; RICHARD D.
MORITZ; BRADLEY J. BLACKETOR;
TIMOTHY HADDON; MARIN M. HALE, JR.;
TREY ANDERSON; RICHARD SAWCHAK;
FRANK YU; JOHN W. SHERIDAN; ROGER
A NEWELL; RODNEY D. KNUTSON;
NATHANIEL KLEIN; INV-MID, LLC; a
Delaware Limited Liability Company; EREF-
MID II, LLC, a Delaware Limited Liability
Company; HCP-MID, LLC, a Delaware Limited
Liability Company; and DOES 1 through 25.

Defendants.

CASE NO. : A-17-756971-B
DEPT. NO.: XXVII

**NOTICE OF ENTRY OF ORDER
REGARDING DEFENDANTS'
MOTIONS TO DISMISS SECOND
AMENDED COMPLAINT**

Electronic Filing Case

///

///

HOLLAND & HART LLP

9555 Hillwood Drive, 2nd Floor

Las Vegas, NV 89134

Phone: (702) 222-2500 ♦ Fax: (702) 669-4650

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Please be advised that the Order Regarding Defendants’ Motions to Dismiss Second Amended Complaint was on June 6, 2018, a copy of which is attached hereto.

DATED this 7th day of June, 2018.

By /s/ David Freeman
Robert J. Cassity, Esq. (9779)
David J. Freeman, Esq. (10045)
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Holly Stein. Sollod, Esq.
(Admitted Pro Hac Vice)
HOLLAND & HART LLP
555 17th Street, Suite 3200
Denver, CO 80202

*Attorneys for Richard D. Moritz,
Bradley J. Blacketor, Timothy Haddon,
Richard Sawchak, John W. Sheridan,
Frank Yu, Roger A. Newell and
Rodney D. Knutson.*

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June 2018, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER REGARDING DEFENDANTS' MOTIONS TO DISMISS SECOND AMENDED COMPLAINT** was served by the following method(s):

☒ **Electronic:** by submitting electronically for filing and/or service with the Eighth Judicial District Court's Odyssey eFileNV Electronic Filing system and serving all parties with an email address on record, as indicated below, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. That date and time of the electronic proof of service in place of the date and place of deposit in the U.S. Mail.

James R. Christensen, Esq.
JAMES R. CHRISTENSEN PC
601 S. 6th St.
Las Vegas, NV 89101
jim@jchristensenlaw.com

Jason D. Smith, Esq.
SANTORO WHIMIRE
10100 W. Charleston Blvd., #250
Las Vegas, Nevada 89135
Email: jsmith@santoronevada.com

Attorneys for Plaintiff

Attorneys for Kenneth A. Brunk

Mark E. Ferrario, Esq.
Christopher Miltenberger, Esq.
GREENBERG TRAURIG, LLP
3773 Howard Hughes Pkwy Ste. 400
Las Vegas, NV 89169
ferrariom@gtlaw.com
miltenbergerc@gtlaw.com

*Attorneys for Martin M. Hale, Jr. Trey
Anderson, Nathaniel Klein, INV-MID, LLC,
EREF-MID II, LLC, and HCP-MID, LLC*

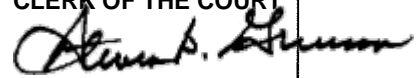
☒ **U.S. Mail:** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Eric B. Liebman, Esq.
Rebecca DeCook, Esq.
Rachel E. Yeates, Esq.
MOYE WHITE LLP
16 Market Square, 6th Floor
1400 16th Street
Denver, CO 80202

Attorneys for Kenneth A. Brunk

/s/ Yalonda Dekle

An Employee of Holland & Hart LLP



ORDR

Robert J. Cassity, Esq. (9779)
David J. Freeman, Esq. (10045)
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Tel: (702) 669-4600
Fax: (702) 669-4650
bcassity@hollandhart.com
dfreeman@hollandhart.com

Holly Stein Sollod, Esq. (*Pro Hac Vice*)
HOLLAND & HART LLP
555 17th Street, Suite 3200
Denver, CO 80202
Tel: (303) 295-8085
Fax: (303) 295-8261
hsteinsollod@hollandhart.com

*Attorneys for Richard D. Moritz,
Bradley J. Blacketor, Timothy Haddon,
Richard Sawchak, John W. Sheridan,
Frank Yu, Roger A. Newell and
Rodney D. Knutson.*

DISTRICT COURT
CLARK COUNTY, NEVADA

DANIEL E. WOLFUS,
Plaintiff,
v.

CASE NO.: A-17-756971-B
DEPT. NO.: XXVII

KENNETH A. BRUNK; RICHARD D.
MORITZ; BRADLEY J. BLACKETOR;
TIMOTHY HADDON; MARIN M. HALE, JR.;
TREY ANDERSON; RICHARD SAWCHAK;
FRANK YU; JOHN W. SHERIDAN; ROGER
A NEWELL; RODNEY D. KNUTSON;
NATHANIEL KLEIN; INV-MID, LLC; a
Delaware Limited Liability Company; EREF-
MID II, LLC, a Delaware Limited Liability
Company; HCP-MID, LLC, a Delaware Limited
Liability Company; and DOES 1 through 25.

Defendants.

**ORDER REGARDING DEFENDANTS'
MOTIONS TO DISMISS SECOND
AMENDED COMPLAINT**

Electronic Filing Case

This matter came before this Court for hearing on May 9, 2018 at 10:30 a.m., on
Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John

1 W. Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson (collectively, the “D&O
2 Defendants”) *D&O Defendants’ Motion to Dismiss Second Amended Complaint* (the “Motion”),
3 Defendants Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID
4 II, LLC and HCP-MID, LLC (collectively, the “Hale Defendants”) *Motion to Dismiss and Joinder*
5 thereto (the “Hale Joinder”) and Defendant Kenneth A. Brunk (“Brunk”) *Motion to Dismiss and*
6 *Joinder* thereto (the “Brunk Joinder”), wherein the D&O Defendants, Hale Defendants and Brunk
7 (collectively, the “Defendants”) moved this Court to dismiss the *Second Amended Complaint for*
8 *Damages* filed by Plaintiff Daniel E. Wolfus (“Wolfus” or “Plaintiff”) on February 5, 2018 (the
9 “Second Amended Complaint” or “SAC”).

10 Robert J. Cassity, Esq. and David J. Freeman, Esq., of the law firm HOLLAND & HART
11 LLP, appeared on behalf of the D&O Defendants. Mark E. Ferrario, Esq. and Christopher R.
12 Miltenberger, Esq., of the law firm GREENBERG TRAURIG, LLP, appeared on behalf of the Hale
13 Defendants. Eric B. Liebman, Esq., of the law firm MOYE WHITE LLP, and Jason D. Smith, Esq.,
14 of the law firm SANTORO WHITMIRE, appeared on behalf of Brunk. James R. Christensen, Esq.,
15 of the law firm JAMES R. CHRISTENSEN PC, and Samuel T. Rees, Esq. appeared on behalf of
16 Plaintiff.

17 Having carefully considered the D&O Defendants’ Motion, Hale Joinder, Brunk Joinder,
18 Plaintiff’s *Consolidated Memorandum of Points and Authorities in Opposition to Motions to*
19 *Dismiss*, the Defendants’ respective reply briefs filed in support of the Motion, together with all
20 declarations filed in support of and opposition to the Motion and Joinders, including the exhibits
21 to the declarations, the oral argument of counsel presented at the hearing on this matter, and good
22 cause appearing, the Court decides the submitted issues as follows:

23 FACTUAL ALLEGATIONS

24 1. Midway Gold Corp. (“Midway”) was a publicly traded Canadian Corporation
25 incorporated under the Company Act of British Columbia, with its principal executive offices
26 located in Englewood, Colorado. SAC ¶ 23.

1 2. Midway was engaged in the business of exploring and mining gold, primarily from
2 mines located in Nevada and Washington (*see id.* ¶¶ 24, 30), including the Pan Mine located at
3 the northern end of the Pancake mountain range in Western Pine County, Nevada (*see id.* ¶ 32).

4 3. Defendants are alleged to be former directors, officers and/or controlling persons
5 of Midway. SAC ¶¶ 8-20. Defendants INV-MID, LLC, EREF-MID II, LLC, and HCP-MID,
6 LLC are each Delaware limited liability corporations with their principal places of business in
7 New York. SAC ¶ 20.

8 4. Plaintiff, a California resident, became an outside director of Midway in
9 November 2008 and began purchasing Midway common stock in the open market in February
10 2008. *Id.* ¶¶ 7, 26 and 29.

11 5. In 2009, Plaintiff became Chairman of the Board and the Chief Executive Officer
12 of Midway, serving in both capacities until May 18, 2012 when he was replaced by Brunk. *Id.* ¶
13 27.

14 6. Plaintiff also received stock option grants pursuant to Midway's qualified
15 employee stock option plan on January 7, 2009 and September 10, 2009. *See* Mot. Exs. H, I.

16 7. At the time Plaintiff became Chairman of the Board and CEO, Midway had
17 properties in the exploratory stage where gold mineralization had been identified (*see* Compl. at
18 ¶ 30), including the Pan Mine (*see id.* ¶ 32).

19 8. Prior to May 2010, Midway made the decision to convert from a purely exploration
20 company into a gold mining production company using the Pan Mine as its initial production
21 mine. *Id.* ¶ 35.

22 9. In late 2011, when Plaintiff was still Midway's Chairman and CEO, an
23 independent contractor, Gustavson Associates, completed a feasibility study on the Pan Mine,
24 which predicted over 1 million ounces of gold existed at the mine, and could be commercially
25 mined (the "2011 Pan Mine Study"). *Id.* ¶ 44; *Id.* Ex. 1 at 9.

1 10. Midway disclosed the study to the public in December 2011 (*see id.* ¶ 45), and
2 stated it was converting to a production company to bring the Pan Mine online as a profitable
3 revenue stream.

4 11. Plaintiff alleges that, by either mid or late 2013, Midway's management and its
5 board (including the D&O Defendants) knew the Pan Mine was being built and operated in ways
6 that were materially different from those assumed in the 2011 Pan Mine Study, but the Defendants
7 did not inform investors of the material impact on cash flows as a result of those differences. *Id.*
8 ¶ 65.

9 12. Specifically, Plaintiff alleges the Defendants failed to disclose that Midway (a)
10 was unable to raise sufficient cash to complete the Pan Mine project in the manner set forth in the
11 2011 Pan Mine Study, as well as fund on-going operations until the Pan Mine project produced
12 sufficient revenues to cover these expenses, and (b) did not seek the proper permits and did not
13 have the necessary facilities to process the gold solution once leaching was completed, and there
14 would be a considerable delay before the facilities were constructed and permitted for operations.
15 *Id.* ¶¶ 65, 86.

16 13. On January 23, 2014, Plaintiff exercised stock options by purchasing 200,000
17 shares at \$0.56/share for \$112,000 Canadian Dollars (\$100,636 USD). *Id.* ¶ 69.

18 14. On September 19, 2014, Plaintiff exercised his stock option by purchasing
19 1,000,000 shares at \$0.86/share for \$860,000 Canadian Dollars (\$783,778 USD). Plaintiff's
20 purchase was also as a result of his exercising certain of his qualified employee stock options. *Id.*
21 ¶¶ 87, 88, 89.

22 15. Plaintiff has asserted claims against Defendants arising out of the Defendants'
23 alleged failure to disclose certain facts regarding the progress (or lack thereof) of the Pan Mine
24 project prior to Plaintiff's stock option exercises in 2014.

25 16. Plaintiff alleges that had he known these undisclosed facts, he would not have
26 exercised his stock options in either January 2014 or September 2014. Plaintiff also alleges that
27 he and his family were induced to hold their stock when, had they known the material facts, they
28

1 would have sold their stock when Midway's stock price reached its peak on February 28, 2014.
2 See Compl. ¶¶ 106, 111, 114, 117, 124, 130, 131, 144-145.

3 CONCLUSIONS OF LAW

4 17. When a plaintiff fails to "state a claim upon which relief can be granted," the Court
5 must dismiss the claim upon motion under NRCP 12(b)(5). "In considering a motion to dismiss
6 pursuant to NRCP 12(b)(5) the court accepts a plaintiff's factual allegations as true, but the
7 allegations must be legally sufficient to constitute the elements of the claims asserted." *Sanchez*
8 *ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009) (citation
9 omitted). "To survive dismissal, a complaint must contain some 'set of facts, which, if true, would
10 entitle the plaintiff to relief.'" *In re Amerco Derivative Litig.*, 127 Nev. 196, 211, 252 P.3d 681,
11 692 (2011) (citation omitted). "Dismissal is proper where the allegations are insufficient to
12 establish the elements of a claim for relief." *Stockmeier v. Nevada Dep't of Corr.*, 124 Nev. 313,
13 316, 183 P.3d 133, 135 (2008) (citations omitted).

14 18. Plaintiff's first cause of action is for Securities Fraud under the California
15 Corporate Securities Act. Cal. Corp. Code § 25401 provides: "It is unlawful for any person to
16 offer or sell a security in this state, or to buy or offer to buy a security in this state, by means of
17 any written or oral communication that includes an untrue statement of a material fact or omits to
18 state a material fact necessary to make the statements made, in the light of the circumstances
19 under which the statements were made, not misleading."

20 19. Cal. Corp. Code § 25017(a) provides: "Sale or sell includes every contract of sale
21 of, contract to sell, or disposition of, a security or interest in a security for value. Sale or sell
22 includes any exchange of securities and any change in the rights, preferences, privileges, or
23 restrictions of or on outstanding securities."

24 20. Further, Cal. Corp. Code § 25017(e) provides: "Every sale or offer of a warrant or
25 right to purchase or subscribe to another security of the same or another issuer, as well as every
26 sale or offer of a security which gives the holder a present or future right or privilege to convert
27 the security into another security of the same or another issuer, includes an offer and sale of the
28

1 other security only at the time of the offer or sale of the warrant or right or convertible security;
2 but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of
3 securities pursuant thereto is an offer or sale.”

4 21. After review of the plain language of Cal. Corp. Code § 25017(e), the Court
5 concludes that neither the exercise of the right to purchase shares nor the issuance of securities
6 pursuant thereto is an offer or sale. The sale or offer is deemed to occur at the time of the offer
7 or sale of the right to purchase the share.

8 22. Although Plaintiff contends this provision relates to stock warrants, stock warrants
9 are listed separately from rights to purchase and is separated by the word “or,” implying that the
10 provision applies to both warrants and rights to purchase shares.

11 23. Plaintiff claims the alleged misrepresentations, namely the 2013 and 2014 Material
12 Facts impose liability on Defendants under Cal. Corp. Code § 25401 for the alleged misleading
13 sale. However, the application of Cal. Corp. Code § 25017(e) indicates that the sale occurred in
14 2009 when the stock options were issued, and there are no allegations that the sale in 2009 was
15 based upon any untrue statement of a material fact or an omission of the same. Accordingly, the
16 California Securities Fraud cause of action fails as a matter of law and is subject to dismissal with
17 prejudice as to all Defendants.

18 24. The Court further finds that the remaining causes of action Breach of Fiduciary
19 Duty, Aiding and Abetting a Breach of Fiduciary Duty, Fraud, and Negligent Misrepresentation
20 are sufficiently pled in the Second Amended Complaint.

21 25. Defendants, with the exception of Frank Yu, have also moved for dismissal on the
22 basis of lack of personal jurisdiction pursuant to NRCP 12(b)(2).

23 26. Rule 12(b)(2) of the Nevada Rules of Civil Procedure (“NRCP”) allows a party to
24 seek dismissal of a complaint for lack of personal jurisdiction. NRCP 12(b)(2); *Trump v. District*
25 *Court*, 109 Nev. 687, 693, 857 P.2d 740, 744 (1993).

26 27. The Court may exercise general personal jurisdiction over a defendant when the
27 defendant’s contacts with the State of Nevada are so “substantial” or “continuous and systematic”
28

1 such that hailing them into court would be reasonable as they may be deemed to be present within
2 this state. *Budget Rent-A-Car v. Eighth Judicial Dist. Court*, 108 Nev. 483, 485, 835 P.2d 17, 19
3 (1992).

4 28. Alternatively, the Court may exercise specific personal jurisdiction over a
5 defendant where: (1) purposefully availed itself of the privilege of acting within the state or of
6 causing important consequences in the state; (2) the cause of action arises from defendant's
7 purposeful contacts with the forum state; and (3) those contacts with the forum state were
8 substantial enough to make the exercise of jurisdiction over the defendant reasonable. *Consipio*
9 *Holding, BV v. Carlberg*, 128 Nev. Adv. Op. 43, 282 P.3d 751, 755 (2012).

10 29. The Court determined that Plaintiff does not oppose Defendants' contention that
11 the Court lacks personal jurisdiction over INV-MID, LLC, EREF-MID II, LLC, and HCP-MID,
12 LLC. These Defendants are each Delaware LLCs with principal places of business in New York.
13 SAC ¶ 20.

14 30. This Court cannot exercise general personal jurisdiction over Defendants INV-
15 MID, LLC, EREF-MID II, LLC and HCP-MID, LLC, as Plaintiff has not alleged such jurisdiction
16 nor has he made any such showing supporting the exercise of such jurisdiction.

17 31. Defendants INV-MID, LLC, EREF-MID II, LLC and HCP-MID, LLC have not
18 purposefully availed themselves of the privilege of acting within this State or causing any
19 important consequences within this State.

20 32. Plaintiff's causes of action do not arise from any of Defendants INV-MID, LLC,
21 EREF-MID II, LLC and HCP-MID, LLC's purposeful contacts with this State.

22 33. It would be unreasonable to exercise specific personal jurisdiction over
23 Defendants INV-MID, LLC, EREF-MID II, LLC and HCP-MID, LLC under these
24 circumstances.

25 34. Accordingly, as there are no allegations nor showings that the Court has personal
26 jurisdiction over these Defendants, the Complaint is dismissed with prejudice as to INV-MID,
27 LLC, EREF-MID II, LLC, and HCP-MID, LLC.

1 filings and Press Releases that predicate the Breach of Fiduciary Duty, Aiding and Abetting a
2 Breach of Fiduciary Duty, Fraud, and Negligent Misrepresentation causes of action, as follows:

3 1. Plaintiff is limited to four sets of ten interrogatories (i.e., Plaintiff may serve four
4 separate defendants with a set of ten interrogatories), and answers must be served within ten days
5 of service of the interrogatories.

6 2. Plaintiff is limited to four depositions lasting two hours each (i.e., Plaintiff may
7 take depositions of four defendants, each lasting up to two hours), which depositions may occur
8 upon not less than ten days' notice.

9 3. These discovery mechanisms are independent of the Nevada Rules of Civil
10 Procedure allowances for general discovery, yet shall be limited to the jurisdictional issues
11 enumerated herein.

12 4. The parties will initially have 90 days to complete jurisdictional discovery, with
13 jurisdictional discovery closing on August 19, 2018.

14 ///

15 ///

16 ///

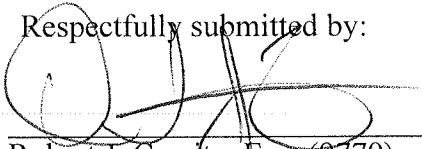
1 IT IS FURTHER ORDERED that a Status Check is hereby set for July 26, 2018 at 11:00
2 a.m. to determine the status of jurisdictional discovery.

3 IT IS SO ORDERED.

4 DATED this 6th day of June 2018.

5 Nancy Alf
6 DISTRICT COURT JUDGE

7 Respectfully submitted by:

8 

9 Robert J. Cassity, Esq. (9779)

10 David J. Freeman, Esq. (10045)

11 HOLLAND & HART LLP

12 9555 Hillwood Drive, 2nd Floor

13 Las Vegas, Nevada 89134

14 Holly Stein. Sollod, Esq. (*Admitted Pro Hac Vice*)

15 HOLLAND & HART LLP

16 555 17th Street, Suite 3200

17 Denver, CO 80202

18 *Attorneys for Richard D. Moritz,*
19 *Bradley J. Blacketer, Timothy Haddon,*
20 *Richard Sawchak, John W. Sheridan,*
21 *Frank Yu, Roger A. Newell and*
22 *Rodney D. Knutson*

23 11006715_4
24
25
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Securities (NRS 90)

COURT MINUTES

September 26, 2017

A-17-756971-B Daniel Wolfus, Plaintiff(s)
vs.
Richard Moritz, Defendant(s)

**September 26, 2017 3:00 AM Motion to Associate
Counsel**

HEARD BY: Allf, Nancy

COURTROOM: No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review on August 24, 2017 Defendants Moritz, Blacketor, Haddon, Saqchak, Sheridan, Yu, Newell, and Knutson filed a Motion to Associate Counsel (Holly Stein Sollod) (Motion) and the matter was set for September 26, 2017 on Chambers Calendar.

COURT FURTHER FINDS after review the Motion seeks to associate Holly Stein Sollod, Esq. of the law firm of Holland & Hart LLP; the Motion is in compliance with SCR 42 and no oppositions have been filed.

COURT ORDERS for good cause appearing and after review that Defendants Motion to Associate Counsel (Holly Stein Sollod) is GRANTED; the Court has reviewed the Motion, which provides cause for granting the Motion; Hearing set for CHAMBERS CALENDAR on September 26, 2017 is VACATED; Movant to submit the appropriate order.

CLERK'S NOTE: A copy of this minute order was faxed to:
James R. Christensen, Esq. (702-272-0415)
Santoro Whitmire (702-948-8773)
Moye White LLP (303-292-4510)

Greenberg Traurig, LLP (702-792-9002)
Holland & Hart LLP (702-669-4650, 303-2958261)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Securities (NRS 90)

COURT MINUTES

October 24, 2017

A-17-756971-B Daniel Wolfus, Plaintiff(s)
vs.
Richard Moritz, Defendant(s)

**October 24, 2017 3:00 AM Motion to Associate
Counsel**

HEARD BY: Allf, Nancy

COURTROOM: No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that Defendant Kenneth A. Brunk filed a Motion to Associate Counsel (Motion) and a Hearing was set for October 24, 2017 on Chambers Calendar.

COURT FURTHER FINDS after review the Motion seeks to associate Eric B. Liebman, Esq., Rebecca DeCook, Esq. and Rachel E. Yeates, Esq., all from the law firm of Moye White LLP; the Motion is in compliance with SCR 42 and no oppositions have been filed.

COURT ORDERS for good cause appearing and after review that Defendant Kenneth A. Brunk s Motion to Associate Counsel is GRANTED; the Court has reviewed the Motion, which provides cause for granting the Motion; Hearing set on CHAMBERS CALENDAR on October 24, 2017 is VACATED. Movant to submit the appropriate orders.

CLERK'S NOTE: A copy of this minute order was faxed to:
James R. Christensen, Esq. (702-272-0415)
Santoro Whitmire (702-948-8773)
Moye White LLP (303-292-4510)
Greenberg Traurig, LLP (702-792-9002)

Holland & Hart LLP (702-669-4650, 303-2958261)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Securities (NRS 90)

COURT MINUTES

November 01, 2017

A-17-756971-B Daniel Wolfus, Plaintiff(s)
vs.
Richard Moritz, Defendant(s)

November 01, 2017 10:30 AM All Pending Motions

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Brynn White

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT...MOTION TO DISMISS AND JOINDER TO D&O DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT...MOTION TO DISMISS OF KENNETH A BRUNK AND JOINDER IN D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT...JOINDER IN D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT AND SUPPLEMENTAL MOTION TO DISMISS OF KENNETH A BRUNK

Arguments by Mr. Cassity, Mr. Ferrario, and Mr. Leadman regarding the merits of, and opposition to, the pending motions. COURT ORDERED, D&O Defendant's Motion to Dismiss Amended Complaint, Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Amended Complaint, Motion to Dismiss of Kenneth A Brunk and Joinder in D&O Defendant's Motion to Dismiss Amended Complaint, and Joinder in D&O Defendant's Motion to Dismiss Amended Complaint and Supplemental Motion to Dismiss of Kenneth A Brunk CONTINUED to chambers calendar for decision, Court has concerns regarding jurisdictional arguments and will reread the case law.

11/21/2017 CHAMBERS D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT;

MOTION TO DISMISS AND JOINDER TO D&O DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT; MOTION TO DISMISS OF KENNETH A BRUNK AND JOINDER IN D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT; AND JOINDER IN D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT AND SUPPLEMENTAL MOTION TO DISMISS OF KENNETH A BRUNK

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Securities (NRS 90)

COURT MINUTES

November 21, 2017

A-17-756971-B Daniel Wolfus, Plaintiff(s)
vs.
Richard Moritz, Defendant(s)

November 21, 2017 3:00 AM Decision

HEARD BY: Allf, Nancy **COURTROOM:** No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

-

COURT FINDS after review on November 1, 2017 the Court heard argument on the Motions to Dismiss and Joinders thereto. The Court took the matters under submission and set a Status Check for November 21, 2017 on Chambers Calendar for the Court to release a Decision and Order.

COURT ORDERS for good cause appearing and after review the Status Check set for Chambers Calendar on November 21, 2017, CONTINUED to December 5, 2017 on Chambers Calendar; Court will either release a Decision and Order by the December 5, 2017 Status Check, or provide a prospective future date to expect it.

CONTINUED TO: 12/5/2017 (CHAMBERS)

CLERK'S NOTE: A copy of this minute order was faxed to:
James R. Christensen, Esq. (702-272-0415)
Santoro Whitmire (702-948-8773)
Moye White LLP (303-292-4510)
Greenberg Traurig, LLP (702-792-9002)
Holland & Hart LLP (702-669-4650, 303-2958261)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Securities (NRS 90)

COURT MINUTES

November 28, 2017

A-17-756971-B Daniel Wolfus, Plaintiff(s)
vs.
Richard Moritz, Defendant(s)

November 28, 2017	3:00 AM	Minute Order	Minute Order: Motion to Associate Counsel set 12/6/2017 GRANTED and VACATED
--------------------------	----------------	---------------------	--

HEARD BY: Allf, Nancy

COURTROOM: No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review on October 24, 2017 Plaintiff Daniel E. Wolfus filed a Motion to Associate Counsel (Motion) and the matter was set for December 6, 2017 at 9:30 a.m. on Motions Calendar.

COURT FURTHER FINDS after review the Motion seeks to associate Samuel T. Rees, Esq. of the law firm of Samuel T. Rees, Attorney at Law; the Motion is in compliance with SCR 42 and no oppositions have been filed.

COURT ORDERS for good cause appearing and after review that Plaintiff Daniel E. Wolfus s Motion to Associate Counsel for Samuel T. Rees is GRANTED; the Court has reviewed the Motion, which provides cause for granting the Motion; Hearing set for MOTIONS CALENDAR on December 6, 2017 at 9:30 a.m. is VACATED; Movant to submit the appropriate order.

CLERK'S NOTE: A copy of this minute order was faxed to:

James R. Christensen, Esq. (702-272-0415)
Santoro Whitmire (702-948-8773)
Moye White LLP (303-292-4510)
Greenberg Traurig, LLP (702-792-9002)
Holland & Hart LLP (702-669-4650, 303-2958261)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Securities (NRS 90)

COURT MINUTES

November 29, 2017

A-17-756971-B Daniel Wolfus, Plaintiff(s)
vs.
Richard Moritz, Defendant(s)

November 29, 2017 3:00 AM Decision

HEARD BY: Allf, Nancy **COURTROOM:** No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review on August 25, 2017, Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell, and Rodney D. Knutson filed a Motion to Dismiss Amended Complaint. Defendants Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID II, LLC, and HCP-MID, LLC filed a Motion to Dismiss and Joinder to D&O Defendants Motion to Dismiss Amended Complaint. Defendant Kenneth A. Brunk filed a Motion to Dismiss of Kenneth A. Brunk and Joinder in D&O Defendants Motion to Dismiss Amended Complaint.

COURT FURTHER FINDS after review these matters came on for hearing on November 1, 2017; James R. Christensen, Esq. appearing for Plaintiff Daniel E. Wolfus (Plaintiff); Robert J. Cassity, Esq. and David J. Freeman, Esq. appearing for the D&O Defendants; Mark E. Ferrario, Esq. and Christopher R. Miltenberger, Esq. appearing for the Hale Defendants; and Eric B. Liebman, Esq. and Jason D. Smith, Esq. appearing for Defendant Kenneth A. Brunk (all collectively as Defendants).

COURT FURTHER FINDS after review Defendants argue the Court lacks subject matter jurisdiction because Plaintiff s claims are derivative, and under the Business Corporations Act, the Supreme Court of British Columbia has exclusive jurisdiction over derivative claims against a Canadian corporation. Moreover, Defendants argue that due to the Midway bankruptcy action the liquidating

trustee has the sole right to assert derivative claims. Plaintiff counters that under the Direct Harm Test enumerated in *Parametric Sound Corp.*, Plaintiff brings direct claims because Plaintiff individually suffered harm and any recovery will remit to Plaintiff and his assignors, not to Midway. See *Parametric Sound Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 133 Nev. Adv. Op. 59, 401 P.3d 1100 (Nev. 2017).

COURT FURTHER FINDS after review Plaintiff's claims are derivative in nature. Though Plaintiff frames his damages as arising from the exercise of his stock options and corresponding purchase of Midway shares, reading the Complaint as a whole indicates the alleged harm suffered comes from his shares becoming valueless after acquiring them. Claims premised on harm caused by the reduction in value of shares of stock are inherently derivative as the reduction arises from the reduction of the entire value of the corporation, and such an equal injury is not a specific direct harm to each shareholder individually. See *id.*

THEREFORE COURT ORDERS for good cause appearing and after review Defendants' Motions to Dismiss and Joinders thereto are GRANTED. The Complaint is dismissed, and Plaintiff is granted leave to amend.

COURT FURTHER ORDERS for good cause appearing and after review Defendants are directed to prepare and submit an Order with detailed findings of fact and conclusions of law, allowing Plaintiff to review the Order as to form before submitting. After submission, Plaintiff will have 30 days from the Notice of Entry of Order to file a Second Amended Complaint.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Securities (NRS 90)

COURT MINUTES

May 09, 2018

A-17-756971-B Daniel Wolfus, Plaintiff(s)
vs.
Richard Moritz, Defendant(s)

May 09, 2018 10:30 AM All Pending Motions

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Brynn White

REPORTER:

PARTIES

PRESENT:	Cassity, Robert J.	Attorney
	Christensen, James R.	Attorney
	Ferrario, Mark E., ESQ	Attorney
	Freeman, David J., ESQ	Attorney
	Liebman, Eric B.	Attorney
	Miltenberger, Chris	Attorney
	Rees, Samuel T.	Attorney
	Smith, Jason D.	Attorney

JOURNAL ENTRIES

- D&O DEFENDANT'S MOTION TO DISMISS SECOND AMENDED COMPLAINT...MOTION TO DISMISS AND JOINDER TO D&O DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT...KENNETH A. BRUNK'S MOTION TO DISMISS SECOND AMENDED COMPLAINT AND JOINDER IN D&O DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT

Arguments by Mr. Cassity, Mr. Miltenberger, Mr. Liebman, and Mr. Christensen regarding the merits of and opposition to the pending motions. COURT ORDERED, D&O Defendant's Motion to Dismiss Second Amended Complaint; Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Second Amended Complaint; and Kenneth A. Brunk's Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants' Motion to Dismiss Second Amended Complaint TAKEN

UNDER ADVISEMENT for Court to further review the briefs, matter SET for STATUS CHECK on chambers calendar.

5/22/2018 (CHAMBERS) DECISION ON D&O DEFENDANT'S MOTION TO DISMISS SECOND AMENDED COMPLAINT; .MOTION TO DISMISS AND JOINER TO D&O DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT; AND KENNETH A. BRUNK'S MOTION TO DISMISS SECOND AMENDED COMPLAINT AND JOINER IN D&O DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT

May 18, 2018

PRINT DATE: 02/14/2020 Page 14 of 31 Minutes Date: September 26, 2017

or offer to buy a security in this state, by means of any written or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading.

COURT FURTHER FINDS after review Cal. Corp. Code 25017(a) provides: Sale or sell includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. Sale or sell includes any exchange of securities and any change in the rights, preferences, privileges, or restrictions of or on outstanding securities. Further, Cal. Corp. Code 25017(e) provides: Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, includes an offer and sale of the other security only at the time of the offer or sale of the warrant or right or convertible security; but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of securities pursuant thereto is an offer or sale.

COURT FURTHER FINDS after review under the plain language of Cal. Corp. Code 25017(e), neither the exercise of the right to purchase shares nor the issuance of securities pursuant thereto is an offer or sale. The sale or offer is deemed to occur at the time of the offer or sale of the right to purchase the share. Though Plaintiff contends this provision relates to stock warrants, stock warrants are listed separately from rights to purchase and is separated by the word or, implying that the provision applies to both warrants and rights to purchase shares. Plaintiff claims the alleged misrepresentations, namely the 2013 and 2014 Material Facts impose liability on Defendants under Cal. Corp. Code 25401 for the alleged misleading sale. However, since the application of Cal. Corp. Code 25017(e) indicates the sale occurred in 2009 when the stock options were issued, and there are no allegations that the sale in 2009 contained any untrue statement of a material fact or an omission of the same. Accordingly, the Securities Fraud cause of action fails as a matter of law and is dismissed with prejudice as to all Defendants.

COURT FURTHER FINDS after review the remaining causes of action Breach of Fiduciary Duty, Aiding and Abetting a Breach of Fiduciary Duty, Fraud, and Negligent Misrepresentation are sufficiently pled in the Second Amended Complaint.

COURT FURTHER FINDS after review the Court finds it appropriate to determine the sufficiency of personal jurisdiction against certain remaining Defendants through jurisdictional discovery.

COURT FURTHER FINDS after review because the parties do not dispute that the Court has general jurisdiction over Defendant Frank Yu, there will be no jurisdictional discovery as to determining the sufficiency of personal jurisdiction over Mr. Yu.

COURT FURTHER FINDS after review Plaintiff does not oppose Defendants contention that the Court lacks personal jurisdiction over INV-MID, LLC, EREF-MID II, LLC, and HCP-MID, LLC. Further, the Second Amended Complaint alleges that these Defendants are each Delaware LLCs with

principal places of business in New York. Second Am. Compl. 20. Accordingly, as there are no allegations nor showings that the Court has personal jurisdiction over these Defendants, the Complaint is dismissed with prejudice as to INV-MID, LLC, EREF-MID II, LLC, and HCP-MID, LLC.

COURT ORDERS for good cause appearing and after review the parties may conduct jurisdictional discovery related to the Defendants not already addressed by this minute Order: Richard D. Moritz, Bradley J. Blacketer, Timothy Haddon, Richard Sawchak, John W. Sheridan, Roger A. Newell, Rodney D. Knutson, Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, and Kenneth A. Brunk. Jurisdictional discovery is limited to each of these Defendants' contacts with Nevada related to the planning, preparation, and issuance of the SEC filings and Press Releases that predicate the Breach of Fiduciary Duty, Aiding and Abetting a Breach of Fiduciary Duty, Fraud, and Negligent Misrepresentation causes of action.

COURT FURTHER ORDERS for good cause appearing and after review Plaintiff is limited to four sets of ten interrogatories per Defendant, and answers must be served within ten days of service of the interrogatories.

COURT FURTHER ORDERS for good cause appearing and after review, Plaintiff is limited to four depositions lasting two hours each, per Defendant, which may occur upon not less than ten days notice. These discovery mechanisms are independent of the NRCP allowances for general discovery, yet limited to the jurisdictional issues enumerated here. The parties will initially have 90 days to complete jurisdictional discovery, with jurisdictional discovery closing August 19, 2018. Status Check SET for July 26, 2018 at 11:00 a.m. to determine the status of jurisdictional discovery.

COURT FURTHER ORDERS for good cause appearing and after review, Mr. Cassity is to prepare and submit the Order in compliance with EDCR 7.21, allowing each other party the opportunity to review and approve the form prior to submission.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Securities (NRS 90)

COURT MINUTES

June 04, 2018

A-17-756971-B Daniel Wolfus, Plaintiff(s)
vs.
Richard Moritz, Defendant(s)

June 04, 2018

3:00 AM

Minute Order

**Minute Order:
Disclosure
*ENTERED IN
ERROR***

HEARD BY: Alf, Nancy

COURTROOM: No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- As the minute order from case A773230 CIMA Group LLC vs. CWNevada, LLC dated 6/5/2018 was entered in this case in error, Minutes have been AMENDED and REMOVED from this case.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Securities (NRS 90)

COURT MINUTES

June 21, 2018

A-17-756971-B Daniel Wolfus, Plaintiff(s)
vs.
Richard Moritz, Defendant(s)

June 21, 2018

10:00 AM

All Pending Motions

HEARD BY: Allf, Nancy

COURTROOM: RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Brynn White

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF DEFENDANTS' WRIT PETITION TO THE NEVADA SUPREME COURT ON ORDER SHORTENING TIME...KENNETH A. BRUNK'S JOINDER IN SUPPORT OF D&O DEFENDANTS' MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF DEFENDANTS' WRIT PETITION TO THE NEVADA SUPREME COURT AND EX PARTE APPLICATION FOR ORDER SHORTENING TIME...JOINDER TO MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF DEFENDANTS' WRIT PETITION TO THE NEVADA SUPREME COURT

Eric B. Liebman, Esq., Rebecca B. DeCook, Esq., and Samuel T. Rees, Esq. present telephonically.

Arguments by Mr. Cassity, Mr. Smith, and Mr. Christensen regarding the merits of and opposition to the motion. Court stated its findings and ORDERED, Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court on Order Shortening Time GRANTED, status check SET, Court will require status reports no later than September 21, 2018, parties are required to notify the Court if writ is accepted or if there is additional briefing or IF writ is denied. COURT FURTHER ORDERED, motions set on July 5, 2018 and status check on July 26, 2018 VACATED. Mr. Cassidy to prepare the order and submit it to Plaintiff's counsel for approval.

9/25/2018 (CHAMBERS) STATUS CHECK: STATUS REPORT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Securities (NRS 90)

COURT MINUTES

September 25, 2018

A-17-756971-B Daniel Wolfus, Plaintiff(s)
vs.
Richard Moritz, Defendant(s)

September 25, 2018 3:00 AM Status Check

HEARD BY: Allf, Nancy **COURTROOM:** No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that on June 26, 2018 the Court entered the Order Granting Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court. Status Check was set for September 25, 2018 on Chambers Calendar to review the status of the Writ Petition and the parties were ordered to file Status Reports with the Court on or before September 21, 2018.

COURT FURTHER FINDS after review that Plaintiff s Status Report was filed on September 20, 2018 and Defendant s Status Report was filed on September 21, 2018 (collectively, the Status Reports). The Status Reports indicate that the time for an answer to the Writ Petition was extended to September 26, 2018, and the time for Defendant to file a reply in support of the Writ Petition was extended to 30 days from the date of service of the answer. The Status Reports further indicate that a stay of these proceedings pending resolution of the Writ Petition is still warranted.

COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for Chambers Calendar on September 25, 2018 is hereby CONTINUED to December 4, 2018 on CHAMBERS CALENDAR to review the status of the Writ Petition. The parties are ordered to file Status Reports with the Court on or before November 30, 2018.

CONTINUED TO 12/4/2018 (CHAMBERS)

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Securities (NRS 90)

COURT MINUTES

December 04, 2018

A-17-756971-B Daniel Wolfus, Plaintiff(s)
vs.
Richard Moritz, Defendant(s)

December 04, 2018 3:00 AM Status Check

HEARD BY: Allf, Nancy **COURTROOM:** No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that on June 26, 2018 the Court entered the Order Granting Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court. Status Check was set for September 25, 2018 on Chambers Calendar to review the status of the Writ Petition and the parties were ordered to file Status Reports with the Court on or before September 21, 2018.

COURT FURTHER FINDS after review that Plaintiff s Status Report was filed on September 20, 2018 and Defendant s Status Report was filed on September 21, 2018 (collectively, the Status Reports). The Status Reports indicate that the time for an answer to the Writ Petition was extended to September 26, 2018, and the time for Defendant to file a reply in support of the Writ Petition was extended to 30 days from the date of service of the answer. The Status Reports further indicate that a stay of these proceedings pending resolution of the Writ Petition is still warranted, so the Status Check was continued to December 4, 2018.

COURT FURTHER FINDS after review that no Status Reports were filed prior to the December 4, 2018 Status Check.

COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for

Chambers Calendar on December 4, 2018 is hereby CONTINUED to January 22, 2019 on CHAMBERS CALENDAR to review the status of the Writ Petition. The parties are ordered to file Status Reports with the Court on or before January 18, 2019.

CONTINUED TO: 1/22/2019 (CHAMBERS)

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Securities (NRS 90)

COURT MINUTES

January 22, 2019

A-17-756971-B Daniel Wolfus, Plaintiff(s)
vs.
Richard Moritz, Defendant(s)

January 22, 2019 3:00 AM Status Check

HEARD BY: Allf, Nancy **COURTROOM:** No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that on June 26, 2018 the Court entered the Order Granting Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court. Status Check was set for September 25, 2018 on Chambers Calendar to review the status of the Writ Petition and the parties were ordered to file Status Reports with the Court on or before September 21, 2018.

COURT FURTHER FINDS after review that Plaintiff s Status Report was filed on September 20, 2018 and Defendant s Status Report was filed on September 21, 2018 (collectively, the Status Reports). The Status Reports indicate that the time for an answer to the Writ Petition was extended to September 26, 2018, and the time for Defendant to file a reply in support of the Writ Petition was extended to 30 days from the date of service of the answer. The Status Reports further indicate that a stay of these proceedings pending resolution of the Writ Petition is still warranted, so the Status Check was continued to December 4, 2018.

COURT FURTHER FINDS after review that no Status Reports were filed prior to the December 4, 2018 Status Check, so the Status Check was continued to January 22, 2019 for the parties to file a Status Report.

COURT FURTHER FINDS after review that Plaintiff s Status Report was filed with the Court on January 17, 2019 and Defendants Status Report was filed with the Court on January 18, 2019 indicating that the Writ Petition is pending before the Nevada Supreme Court and that the stay is still warranted.

COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for Chambers Calendar on January 22, 2019 is hereby CONTINUED to March 26, 2019 on CHAMBERS CALENDAR to review the status of the Writ Petition. The parties are ordered to file Status Reports with the Court on or before March 22, 2019.

CONTINUED TO: 3/26/2019 (CHAMBERS)

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Securities (NRS 90)**COURT MINUTES****March 26, 2019**

A-17-756971-B Daniel Wolfus, Plaintiff(s)
 vs.
 Richard Moritz, Defendant(s)

March 26, 2019 3:00 AM Status Check

HEARD BY: Allf, Nancy **COURTROOM:** No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that on June 26, 2018 the Court entered the Order Granting Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court. Status Check was set for September 25, 2018 on Chambers Calendar to review the status of the Writ Petition and the parties were ordered to file Status Reports with the Court on or before September 21, 2018.

COURT FURTHER FINDS after review that Plaintiff s Status Report was filed on September 20, 2018 and Defendant s Status Report was filed on September 21, 2018 (collectively, the Status Reports). The Status Reports indicate that the time for an answer to the Writ Petition was extended to September 26, 2018, and the time for Defendant to file a reply in support of the Writ Petition was extended to 30 days from the date of service of the answer. The Status Reports further indicate that a stay of these proceedings pending resolution of the Writ Petition is still warranted, so the Status Check was continued to December 4, 2018.

COURT FURTHER FINDS after review that no Status Reports were filed prior to the December 4, 2018 Status Check, so the Status Check was continued to January 22, 2019 for the parties to file a Status Report.

COURT FURTHER FINDS after review that Plaintiff s Status Report was filed with the Court on January 17, 2019 and Defendants Status Report was filed with the Court on January 18, 2019 indicating that the Writ Petition is pending before the Nevada Supreme Court and that the stay is still warranted. The Status Check was continued to March 26, 2019 for the parties to file a Status Report.

COURT FURTHER FINDS after review that Plaintiff s Status Report was filed with the Court on March 21, 2019 and Defendant s Status Report was filed with the Court on March 22, 2019. Both Status Reports indicate that the Writ Petition remains pending before the Nevada Supreme Court and that oral argument is scheduled for April 2, 2019, at 10:30 a.m.

COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for Chambers Calendar on March 26, 2019 is hereby CONTINUED to June 4, 2019 on CHAMBERS CALENDAR to review the status of the Writ Petition. The parties are ordered to file Status Reports with the Court on or before May 31, 2019.

CONTINUED TO: 6/4/2019 (CHAMBERS)

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 3/26/2019

**DISTRICT COURT
CLARK COUNTY, NEVADA****Securities (NRS 90)****COURT MINUTES****June 04, 2019**

A-17-756971-B Daniel Wolfus, Plaintiff(s)
vs.
Richard Moritz, Defendant(s)

June 04, 2019 3:00 AM Status Check

HEARD BY: Alf, Nancy

COURTROOM: No Location

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS after review that on June 26, 2018 the Court entered the Order Granting Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court. Status Check was set for September 25, 2018 on Chambers Calendar to review the status of the Writ Petition and the parties were ordered to file Status Reports with the Court on or before September 21, 2018.

COURT FURTHER FINDS after review that Plaintiff s Status Report was filed on September 20, 2018 and Defendant s Status Report was filed on September 21, 2018 (collectively, the Status Reports). The Status Reports indicate that the time for an answer to the Writ Petition was extended to September 26, 2018, and the time for Defendant to file a reply in support of the Writ Petition was extended to 30 days from the date of service of the answer. The Status Reports further indicate that a stay of these proceedings pending resolution of the Writ Petition is still warranted, so the Status Check was continued to December 4, 2018.

COURT FURTHER FINDS after review that no Status Reports were filed prior to the December 4, 2018 Status Check, so the Status Check was continued to January 22, 2019 for the parties to file a Status Report.

COURT FURTHER FINDS after review that Plaintiff s Status Report was filed with the Court on January 17, 2019 and Defendants Status Report was filed with the Court on January 18, 2019 indicating that the Writ Petition is pending before the Nevada Supreme Court and that the stay is still warranted. The Status Check was continued to March 26, 2019 for the parties to file a Status Report.

COURT FURTHER FINDS after review that Plaintiff s Status Report was filed with the Court on March 21, 2019 and Defendant s Status Report was filed with the Court on March 22, 2019. Both Status Reports indicate that the Writ Petition remains pending before the Nevada Supreme Court and that oral argument is scheduled for April 2, 2019, at 10:30 a.m. The Status Check was continued to June 4, 2019 for the parties to file a Status Report.

COURT FURTHER FINDS after review that the Defendant s Status Report was filed on May 30, 2019 and the Plaintiff s Status Report was filed on May 31, 2019. The status reports indicate that the Writ Petition remains pending before the Nevada Supreme Court and that the stay in this case is still warranted.

COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for Chambers Calendar on June 4, 2019 is hereby CONTINUED to October 15, 2019 on CHAMBERS CALENDAR to review the status of the Writ Petition. The parties are ordered to file Status Reports with the Court on or before October 11, 2019.

CONTINUED TO: 10/15/2019 (CHAMBERS)

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 6/4/2019

THE SEALED PORTION
OF THESE MINUTES
WILL FOLLOW VIA
U.S. MAIL.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

JAMES R. CHRISTENSEN, ESQ.
601 S. 6TH ST.
LAS VEGAS, NV 89101

DATE: February 14, 2020
CASE: A-17-756971-B

RE CASE: DANIEL E. WOLFUS vs. KENNETH A. BRUNK; RICHARD D. MORITZ; BRADLEY J. BLACKETOR;
TIMOTHY HADDON; MARTIN M. HALE, JR.; TREY ANDERSON; RICHARD SAWCHAK; FRANK YU; JOHN W.
SHERIDAN; ROGER A. NEWELL; RODNEY D. KNUTSON; NATHANIEL KLEIN; INV-MID, LLC; EREF-MID II, LLC;
HCP-MID, LLC

NOTICE OF APPEAL FILED: February 12, 2020

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☐ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☒ Written Order (*for May 18, 2018 Minute Order*)
- ☒ Notice of Entry of Written Order (*for May 18, 2018 Minute Order*)

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; NOTICE OF POSTING COST BOND; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS SECOND AMENDED COMPLAINT; NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS SECOND AMENDED COMPLAINT; ORDER REGARDING DEFENDANTS' MOTIONS TO DISMISS SECOND AMENDED COMPLAINT; NOTICE OF ENTRY OF ORDER REGARDING DEFENDANTS' MOTIONS TO DISMISS SECOND AMENDED COMPLAINT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

DANIEL E. WOLFUS,

Plaintiff(s),

vs.

KENNETH A. BRUNK; RICHARD D. MORITZ; BRADLEY J. BLACKETOR; TIMOTHY HADDON; MARTIN M. HALE, JR.; TREY ANDERSON; RICHARD SAWCHAK; FRANK YU; JOHN W. SHERIDAN; ROGER A. NEWELL; RODNEY D. KNUTSON; NATHANIEL KLEIN; INV-MID, LLC; EREF-MID II, LLC; HCP-MID, LLC,

Defendant(s),

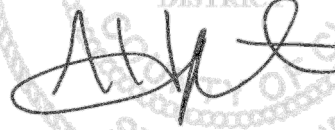
Case No: A-17-756971-B

Dept No: XXVII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 14 day of February 2020.

Steven D. Grierson, Clerk of the Court

A handwritten signature in black ink, appearing to read 'Amanda Hampton', is written over a faint, circular court seal. The seal contains the text 'UNITED STATES DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT LAS VEGAS, NEVADA'.

Amanda Hampton, Deputy Clerk
A-17-756971-B

**JAMES R. CHRISTENSEN ESQ. P.C.
NEVADA IOLTA TRUST ACCOUNT**

601 S. 6TH ST.
LAS VEGAS, NV 89101
PH. (702) 272-0406

Bank of America

94-072/1224

2085

2/12/2020

PAY TO THE
ORDER OF

Supreme Court Clerk

\$ **250.00

Two Hundred Fifty and 00/100*****

DOLLARS

Supreme Court Clerk

MEMO

Wolfus Appeal - filing fee - A-17-756971-B

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT

⑈002085⑈ ⑆122400724⑆ 501010316762⑈

JAMES R. CHRISTENSEN ESQ. P.C.
NEVADA IOLTA TRUST ACCOUNT

Supreme Court Clerk

2/12/2020

2085

250.00

B of A Trust

Wolfus Appeal - filing fee - A-17-756971-B

250.00

