

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**

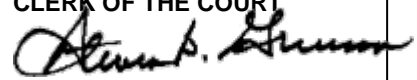
15 **DISTRICT OF NEVADA**

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

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  
3/30/2020 1:04 PM  
Steven D. Grierson  
CLERK OF THE COURT



Electronically Filed  
Apr 07 2020 03:43 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

**AMENDED NOTICE OF  
APPEAL**

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

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; and, (ii) the Order Regarding  
6 Defendants' Motions to Dismiss Second Amended Complaint, electronically  
7 filed and entered on June 6, 2018, notice of entry of which was electronically  
8 filed on June 7, 2018. (The reference to Court Minutes dated May 18, 2018,  
9 has been removed.)  
10  
11

12 Dated this 30<sup>th</sup> day of March, 2020.  
13

14 /s/ Samuel T. Rees  
15 JAMES R. CHRISTENSEN ESQ.  
16 Nevada Bar No. 3861  
17 James R. Christensen PC  
18 601 S. 6th St.  
19 Las Vegas NV 89101  
20 (702) 272-0406  
21 jim@jchristensenlaw.com

22 SAMUEL T. REES ESQ.  
23 Admitted Pro Hac Vice  
24 26 Muirfield Place  
25 New Orleans, LA 70131  
26 (213) 220-9988  
27 streesesq@earthlink.net  
28

Attorneys for Plaintiff DANIEL E. WOLFUS

**CERTIFICATE OF SERVICE**

I CERTIFY SERVICE of **AMENDED 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 30<sup>th</sup> day of March 2020.

*/s/ Dawn Christensen*

An employee of James R. Christensen

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

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 **A756971**  
 Number:  
 Supreme Court No.: **80613**

**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.**

*Lead Attorneys*

**Christensen, James R.**  
*Retained*  
 702-272-0406(W)

**Defendant**

**Anderson, Trey**

**Ferrario, Mark E., ESQ**  
*Retained*  
 702-792-3773(W)

**Blacketor, Bradley J**

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

**Brunk, Kenneth A.**

**Smith, Jason D.**  
*Retained*  
 702-648-8771(W)

**EREF-MID II LLC**

Removed: 06/06/2018  
 Dismissed

**Haddon, Timothy**

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

**Hale, Martin M, Jr.**

**Miltenberger, Chris**  
*Retained*  
 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**

# CASE SUMMARY

CASE NO. A-17-756971-B

**Knutson, Rodney D**

**Moritz, Richard D.**

**Newell, Roger A**

**Sawchak, Richard**

**Sheridan, John W**

**Yu, Frank**

*Retained*  
702-792-3773(W)

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









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

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

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

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

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

DATE	EVENTS & ORDERS OF THE COURT	INDEX
	<b><u>EVENTS</u></b>	
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&amp;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&amp;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&amp;O Defendants Motion to Dismiss Amended Complaint</i>
08/28/2017	 Motion to Dismiss Filed By: Defendant Brunk, Kenneth A.

# CASE SUMMARY

CASE NO. A-17-756971-B

*Motion to Dismiss of Kenneth A. Brunk and Joinder in D&O Defendants Motion to Dismiss Amended Complaint*

08/29/2017



Notice of Change of Hearing

*Notice of Change of Hearing*

09/11/2017



Errata

Filed By: Defendant Brunk, Kenneth A.

*Errata to Motion to Dismiss of Kenneth A. Brunk and Joinder in D&O Defendants' Motion to Dismiss Amended Complaint*

09/18/2017



Motion to Associate Counsel

Filed By: Defendant Brunk, Kenneth A.

*Defendant Kenneth A. Brunk's Motion to Associate Counsel*

09/20/2017



Stipulation and Order

Filed by: Plaintiff Wolfus, Daniel E.

*Stipulation and Order to Continue Hearing and Filing Deadlines*

09/27/2017



Notice of Entry of Stipulation and Order

Filed By: Plaintiff Wolfus, Daniel E.

*Notice of Entry of Stipulation and Order to Continue Hearing and Filing Deadlines*

10/06/2017



Opposition to Motion to Dismiss

Filed By: Plaintiff Wolfus, Daniel E.

*Consolidated Opposition to Motions to Dismiss*

10/12/2017



Order Granting

Filed By: Defendant Moritz, Richard D.

*Order Granting Motion to Associate Counsel*

10/13/2017



Notice of Entry of Order

Filed By: Defendant Moritz, Richard D.

*Notice of Entry of Order*

10/24/2017



Motion to Associate Counsel

Filed By: Plaintiff Wolfus, Daniel E.

*Motion to Associate Counsel*

10/25/2017



Reply in Support

Filed By: Defendant Brunk, Kenneth A.

*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*

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

*Reply in Support of Motion to Dismiss and Joinder to D&O Defendants Reply in Support of Motion to Dismiss Amended Complaint*

10/25/2017



Reply in Support

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

**CASE SUMMARY**

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

*Reply Memorandum In Support Of The D&O Defendants' Motion To Dismiss Amended 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 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>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>



# CASE SUMMARY

CASE NO. A-17-756971-B

03/16/2018	 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&amp;O Defendants' Motion to Dismiss Second Amended Complaint</i>
03/16/2018	 Motion to Dismiss <i>D&amp;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&amp;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&amp;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&amp;O Defendants Reply in Support of Motion to Dismiss Second Amended Complaint</i>
05/02/2018	 Reply <i>Reply In Support of D&amp;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 <i>Notice of Submission of Proposed Final Order and Objection</i>
01/10/2020	 Order Granting Motion <i>Order Granting Defendants' Motions to Dismiss Second Amended Complaint</i>
01/13/2020	 Notice of Entry of Order <i>Notice of Entry of Order Granting Defendants' Motions to Dismiss Second Amended Complaint</i>
01/15/2020	 Memorandum of Costs and Disbursements <i>D&amp;O Defendants' Verified Memorandum of Costs</i>
01/15/2020	 Appendix <i>Appendix of Exhibits to D&amp;O Defendants' Verified Memorandum of Costs</i>
02/12/2020	 Notice of Appeal Filed By: Plaintiff Wolfus, Daniel E. <i>Notice of Appeal</i>
02/12/2020	 Case Appeal Statement Filed By: Plaintiff Wolfus, Daniel E. <i>Case Appeal Statement</i>
02/13/2020	 Notice of Posting of Cost Bond Filed By: Plaintiff Wolfus, Daniel E. <i>Notice of Posting Cost Bond</i>
03/04/2020	 Judgment <i>Judgment</i>
03/05/2020	 Notice of Entry of Judgment Filed By: Defendant Moritz, Richard D. <i>Notice of Entry of Judgment</i>
03/30/2020	 Amended Notice of Appeal Party: Plaintiff Wolfus, Daniel E. <i>Amended Notice of Appeal</i>
03/30/2020	 Notice of Appeal Filed By: Plaintiff Wolfus, Daniel E. <i>Notice of Appeal</i>
03/30/2020	 Case Appeal Statement Filed By: Plaintiff Wolfus, Daniel E. <i>Case Appeal Statement</i>

## **DISPOSITIONS**

01/05/2018	<b>Order of Dismissal Without Prejudice</b> (Judicial Officer: Allf, Nancy) Debtors: Daniel E. Wolfus (Plaintiff)  Creditors: Trey Anderson (Defendant), Richard D. Moritz (Defendant), Kenneth A. Brunk (Defendant), Bradley J Blacketer (Defendant), Timothy Haddon (Defendant), Martin M Hale, Jr.
------------	--

# CASE SUMMARY

CASE NO. A-17-756971-B

(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

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

03/04/2020

**Judgment Plus Interest** (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: 03/04/2020, Docketed: 03/05/2020

Total Judgment: 5,119.30

## 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) Moye White LLP (303-292-4510) Greenberg Traurig, LLP (702-792-9002) Holland & Hart LLP (702-669-4650, 303-2958261) ;*

# CASE SUMMARY

CASE NO. A-17-756971-B

10/24/2017



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

*Defendant Kenenth 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 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) ;*

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 Dismss 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;

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 Dismss and*



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

*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 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 McDewitt, 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) Moye 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*

# CASE SUMMARY

CASE NO. A-17-756971-B

	<p><i>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 &amp; Hart LLP (702-669-4650, 303-2958261) ;</i></p>
12/06/2017	<p><b>CANCELED Motion to Associate Counsel</b> (9:30 AM) (Judicial Officer: Allf, Nancy) <i>Vacated - Previously Decided</i></p>
05/09/2018	<p><b>Motion to Dismiss</b> (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Motion to Dismiss and Joinder to D&amp;O Defendants' Motion to Dismiss Second Amended Complaint</i> Granted in Part;</p>
05/09/2018	<p><b>Motion to Dismiss</b> (10:30 AM) (Judicial Officer: Allf, Nancy) <i>D&amp;O Defendant's Motion to Dismiss Second Amended Complaint</i> Granted in Part;</p>
05/09/2018	<p><b>Countermotion</b> (10:30 AM) (Judicial Officer: Allf, Nancy) <i>Kenneth A. Brunk's Motion to Dismiss Second Amended Complaint and Joinder in D&amp;O Defendants' Motion to Dismiss Second Amended Complaint</i> Granted in Part;</p>
05/09/2018	<p> <b>All Pending Motions</b> (10:30 AM) (Judicial Officer: Allf, Nancy)</p> <p><b>MINUTES</b> Matter Heard; Journal Entry Details: <i>D&amp;O DEFENDANT'S MOTION TO DISMISS SECOND AMENDED COMPLAINT...MOTION TO DISMISS AND JOINDER TO D&amp;O DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT...KENNETH A. BRUNK'S MOTION TO DISMISS SECOND AMENDED COMPLAINT AND JOINDER IN D&amp;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&amp;O Defendant's Motion to Dismiss Second Amended Complaint; Motion to Dismiss and Joinder to D&amp;O Defendants' Motion to Dismiss Second Amended Complaint; and Kenneth A. Brunk's Motion to Dismiss Second Amended Complaint and Joinder in D&amp;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&amp;O DEFENDANT'S MOTION TO DISMISS SECOND AMENDED COMPLAINT; .MOTION TO DISMISS AND JOINDER TO D&amp;O DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT; AND KENNETH A. BRUNK'S MOTION TO DISMISS SECOND AMENDED COMPLAINT AND JOINDER IN D&amp;O DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT ;</i></p> <p><b>SCHEDULED HEARINGS</b> <b>CANCELED Status Check</b> (05/22/2018 at 3:00 AM) (Judicial Officer: Allf, Nancy) <i>Vacated</i> <i>Status Check: Decision on D&amp;O Defendant's Motion to Dismiss Second Amended Complaint; Motion to Dismiss and Joinder to D&amp;O Defendants' Motion to Dismiss Second Amended Complaint and Kenneth A. Brunk's Motion to Dismiss Second Amended Complaint and Joinder in D&amp;O Defendants' Motion to Dismiss Second Amended Complaint</i></p>
05/18/2018	<p> <b>Minute Order</b> (3:00 AM) (Judicial Officer: Allf, Nancy) <i>Decision on D&amp;O Defendant's Motion to Dismiss Second Amended Complaint; Motion to</i></p>



# CASE SUMMARY

CASE NO. A-17-756971-B

*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 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

# CASE SUMMARY

CASE NO. A-17-756971-B

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;*
- 06/21/2018 **Motion to Stay** (10:00 AM) (Judicial Officer: Allf, Nancy)  
*Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court on Order Shortening Time*  
 Granted;
- 06/21/2018 **Joinder** (10:00 AM) (Judicial Officer: Allf, Nancy)  
*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*  
 Matter Heard;
- 06/21/2018 **Joinder** (10:00 AM) (Judicial Officer: Allf, Nancy)  
*Joinder to Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court*  
 Matter Heard;
- 06/21/2018  **All Pending Motions** (10:00 AM) (Judicial Officer: Allf, Nancy)  
**MINUTES**  
 Matter Heard;  
 Journal Entry Details:  
*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*

# CASE SUMMARY

CASE NO. A-17-756971-B

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;

## SCHEDULED HEARINGS



**Status Check** (09/25/2018 at 3:00 AM) (Judicial Officer: Allf, Nancy)

09/25/2018, 12/04/2018, 01/22/2019, 03/26/2019, 06/04/2019, 10/15/2019

Status Check: Status Report

07/05/2018 **CANCELED Motion for Discovery** (10:00 AM) (Judicial Officer: Allf, Nancy)  
Vacated

Plaintiff's Motion for Additional Discovery on Order Shortening Time

07/05/2018 **CANCELED Motion for Discovery** (10:00 AM) (Judicial Officer: Allf, Nancy)  
Vacated

Plaintiff's Motion for Additional Discovery; Order Shortening Time

07/26/2018 **CANCELED Status Check** (11:00 AM) (Judicial Officer: Allf, Nancy)  
Vacated

09/25/2018 **Status Check** (3:00 AM) (Judicial Officer: Allf, Nancy)

09/25/2018, 12/04/2018, 01/22/2019, 03/26/2019, 06/04/2019, 10/15/2019

Status Check: Status Report

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

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

# CASE SUMMARY

CASE NO. A-17-756971-B

*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 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. 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;*

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*

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

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

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 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 4/2/2020**

**0.00**

**Defendant** Hale, Martin M, Jr.

# CASE SUMMARY

CASE NO. A-17-756971-B

Total Charges	1,633.00
Total Payments and Credits	1,633.00
<b>Balance Due as of 4/2/2020</b>	<b>0.00</b>

**Defendant** Moritz, Richard D.

Total Charges	520.50
Total Payments and Credits	520.50
<b>Balance Due as of 4/2/2020</b>	<b>0.00</b>

**Plaintiff** Wolfus, Daniel E.

Total Charges	396.00
Total Payments and Credits	396.00
<b>Balance Due as of 4/2/2020</b>	<b>0.00</b>

**Plaintiff** Wolfus, Daniel E.

Appeal Bond Balance as of 4/2/2020	<b>500.00</b>
------------------------------------	---------------

## 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**

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <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
<b>Probate</b> <b>Probate</b> (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 <b>Estate Value</b> <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	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <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	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <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		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <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.

# BUSINESS 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):

Daniel E. Wolfus

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

Kenneth A. Brunk, et al.,

Attorney (name/address/phone):

James R. Christensen, Esq. (NV Bar No. 3861  
601 S. Sixth Street, Las Vegas, NV 89101  
702-272-0406;

Attorney (name/address/phone):

Mark E. Ferrario, Esq. (NV Bar 1625  
Christopher R. Milgengerger NV Bar 10153  
3773 Howard Hughes Pkwy., 400 N  
Las Vegas, NV 89169; 7002-792-3773

## II. Nature of Controversy (Please check the applicable boxes for both the civil case type and business court case type)

☐ Arbitration Requested

### Civil Case Filing Types

#### Real Property

##### Landlord/Tenant

- ☐ Unlawful Detainer  
☐ Other Landlord/Tenant

##### Title to Property

- ☐ Judicial Foreclosure  
☐ Other Title to Property

##### Other Real Property

- ☐ Condemnation/Eminent Domain  
☐ Other Real Property

#### Construction Defect & Contract

##### Construction Defect

- ☐ Chapter 40  
☐ Other Construction Defect

##### Contract Case

- ☐ Uniform Commercial Code  
☐ Building and Construction  
☐ Insurance Carrier  
☐ Commercial Instrument  
☐ Collection of Accounts  
☐ Employment Contract  
☐ Other Contract

#### Torts

##### Negligence

- ☐ Auto  
☐ Premises Liability  
☐ Other Negligence

##### Malpractice

- ☐ Medical/Dental  
☐ Legal  
☐ Accounting  
☐ Other Malpractice

##### Other Torts

- ☐ Product Liability  
☐ Intentional Misconduct  
☐ Employment Tort  
☐ Insurance Tort  
☒ Other Tort

#### Civil Writs

- ☐ Writ of Habeas Corpus  
☐ Writ of Mandamus  
☐ Writ of Quo Warrant  
☐ Writ of Prohibition  
☐ Other Civil Writ

#### Judicial Review/Appeal/Other Civil Filing

##### Judicial Review

- ☐ Foreclosure Mediation Case

##### Appeal Other

- ☐ Appeal from Lower Court

##### Other Civil Filing

- ☐ Foreign Judgment  
☐ Other Civil Matters

### Business Court Filing Types

#### CLARK COUNTY BUSINESS COURT

- ☐ NRS Chapters 78-89  
☐ Commodities (NRS 91)  
☒ Securities (NRS 90)  
☐ Mergers (NRS 92A)  
☐ Uniform Commercial Code (NRS 104)  
☐ Purchase/Sale of Stock, Assets, or Real Estate  
☐ Trademark or Trade Name (NRS 600)  
☐ Enhanced Case Management  
☐ Other Business Court Matters

#### WASHOE COUNTY BUSINESS COURT

- ☐ NRS Chapters 78-88  
☐ Commodities (NRS 91)  
☐ Securities (NRS 90)  
☐ Investments (NRS 104 Art.8)  
☐ Deceptive Trade Practices (NRS 598)  
☐ Trademark/Trade Name (NRS 600)  
☐ Trade Secrets (NRS 600A)  
☐ Enhanced Case Management  
☐ Other Business Court Matters

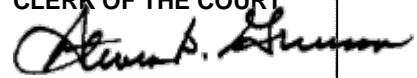
August 2, 2017

Date

/s/ Christopher R. Miltenberger

Signature of initiating party or representative





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](mailto:bcassity@hollandhart.com)  
10 [dfreeman@hollandhart.com](mailto: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](mailto: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:

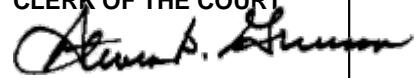
9 Robert J. Cassity

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](mailto:bcassity@hollandhart.com)  
10 [dfreeman@hollandhart.com](mailto: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](mailto: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.*

**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](mailto: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](mailto:ferrariom@gtlaw.com)  
[miltenbergerc@gtlaw.com](mailto: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](mailto:jsmith@santoronevada.com)

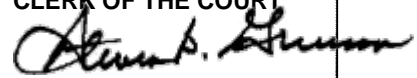
*Attorneys for Kenneth A. Brunk*

☒ **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](mailto:bcassity@hollandhart.com)  
10 [dfreeman@hollandhart.com](mailto: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](mailto: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:

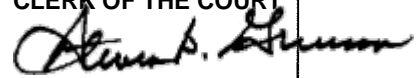
9 Robert J. Cassity  
10

11 Robert J. Cassity, Esq. (9779)  
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



**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 ///

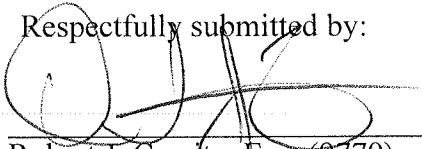
1 IT IS FURTHER ORDERED that a Status Check is hereby set for July 26, 2018 at 11:00  
2 a.m. to determine the status of jurisdictional discovery.

3 IT IS SO ORDERED.

4 DATED this 6<sup>th</sup> 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*)

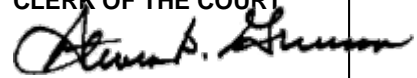
15 HOLLAND & HART LLP

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](mailto:bcassity@hollandhart.com)  
10 [dfreeman@hollandhart.com](mailto: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](mailto: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

///

///

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

3 DATED this 7th day of June, 2018.

4 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. Blacketer, 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](mailto:jim@jchristensenlaw.com)

Jason D. Smith, Esq.  
SANTORO WHIMIRE  
10100 W. Charleston Blvd., #250  
Las Vegas, Nevada 89135  
Email: [jsmith@santoronevada.com](mailto: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](mailto:ferrariom@gtlaw.com)  
[miltenbergerc@gtlaw.com](mailto: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:

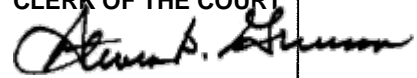
Eric B. Liebman, Esq.  
Rebecca DeCook, Esq.  
Rachel E. Yeates, Esq.  
MOYE WHITE LLP  
16 Market Square, 6th Floor  
1400 16th Street  
Denver, CO 80202

*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 ///

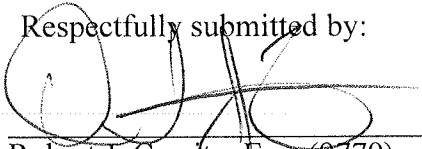
1 IT IS FURTHER ORDERED that a Status Check is hereby set for July 26, 2018 at 11:00  
2 a.m. to determine the status of jurisdictional discovery.

3 IT IS SO ORDERED.

4 DATED this 6<sup>th</sup> 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)

**A-17-756971-B**

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)

**A-17-756971-B**

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)

---

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

**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



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Securities (NRS 90)**

**COURT MINUTES**

**May 18, 2018**

---

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

---

**May 18, 2018      3:00 AM      Minute Order**

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

**COURT CLERK:** Nicole McDevitt

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- 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 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:** Allf, 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)

---

<b>March 26, 2019</b>	<b>3:00 AM</b>	<b>Status Check</b>
-----------------------	----------------	---------------------

<b>HEARD BY:</b> Allf, Nancy	<b>COURTROOM:</b> 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)

---

<b>June 04, 2019</b>	<b>3:00 AM</b>	<b>Status Check</b>
----------------------	----------------	---------------------

<b>HEARD BY:</b> Allf, Nancy	<b>COURTROOM:</b> 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



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Securities (NRS 90)**

**COURT MINUTES**

**October 15, 2019**

---

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

---

<b>October 15, 2019</b>	<b>3:00 AM</b>	<b>Status Check</b>
-------------------------	----------------	---------------------

<b>HEARD BY:</b> Allf, Nancy	<b>COURTROOM:</b> 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. The Status Check was continued to October 15, 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 October 10, 2019 and Defendant s Status Report was filed with the Court on October 11, 2019. The Defendant s Status Report indicates that the Nevada Supreme Court entered an Order on October 11, 2019 granting Defendants Petition for Writ of Prohibition. The Supreme Court s Order directed the Clerk of the Supreme Court to issue a Writ of Prohibition for this Court to enter an order granting Defendants Motion to Dismiss.

THEREFORE, COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for Chambers Calendar on October 15, 2019 is hereby VACATED. Defendant is to prepare an Order consistent with the Supreme Court s decision and upon issuance of its remittitur.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 10/23/2019

# 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):

AMENDED NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; BUSINESS COURT CIVIL COVER SHEET; ORDER GRANTING DEFENDANTS MOTIONS TO DISMISS SECOND AMENDED COMPLAINT; NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION 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

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),

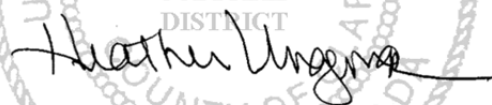
Case No: A-17-756971-B

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 2 day of April 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk