

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

DANIEL E. WOLFUS,

Appellant,

v.

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,

Respondents,

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DANIEL E. WOLFUS,

Appellant,

v.

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,

Respondents,

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Electronically Filed  
**Supreme Court No. 80949** Sep 26 2020 11:58 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
District Court No. A-17-756971-B

Consolidated with:

**Supreme Court No. 80949**

## **INDEX TO APPELLANT'S OPENING BRIEF APPENDIX**

### **VOLUME I OF IV**

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

SAMUEL T. REES, ESQ.  
Admitted Pro Hac vice  
26 Muirfield Place  
New Orleans, LA 70131  
(213) 220-9988  
streesesq@earthlink.net

Attorneys for Appellant, DANIEL E. WOLFUS

<b>Document</b>	<b>Page No.</b>
<b>Volume I:</b>	
Complaint for Damages.....	AA001-135
First Amended Complaint for Damages.....	AA136-250
<b>Volume II:</b>	
First Amended Complaint for Damages.....	AA251-269
Acceptance of Service.....	AA270-271
Acceptance of Service.....	AA272-273
Acceptance of Service.....	AA274
Order Granting Defendants’ Motions to Dismiss Amended Complaint Without Prejudice.....	AA275-288
Notice of Entry of Order Granting Defendants’ Motions to Dismiss Amended Complaint Without Prejudice.....	AA289-305
Second Amended Complaint.....	AA306-451
D&O Defendants’ Motion to Dismiss Second Amended Complaint....	AA452-500
<b>Volume III:</b>	
D&O Defendants’ Motion to Dismiss Second Amended Complaint....	AA501-559
Kenneth A. Brunk’s Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants’ Motion to Dismiss Second Amended Complaint.....	AA560-577
Motion to Dismiss and Joinder to D&O Defendants’ Motion to Dismiss Second Amended Complaint.....	AA578-604

Consolidated Memorandum of Points and Authorities in Opposition  
To Motions to Dismiss Plaintiff's Second Amended Complaint.....AA605-651

Reply in Support of D&O Defendants' Motion to Dismiss Second  
Amended Complaint.....AA652-671

Kenneth A. Brunk's Reply in Support of Motion to Dismiss Second  
Amended Complaint and Joinder in D&O Defendants' Reply in  
Support of Motion to Dismiss Second Amended Complaint..... AA672-681

Reply in Support of Motion to Dismiss and Joinder to D&O  
Defendants' Reply in Support of Motion to Dismiss Second  
Amended Complaint..... AA682-691

Recorder's Transcript of Hearing All Pending Motions May 9, 2018... AA692-733

Order Regarding Defendants' Motions to Dismiss Second Amended  
Complaint.....AA734-743

Notice of Entry of Order Regarding Defendants' Motions to Dismiss  
Second Amended Complaint.....AA744-750

#### **Volume IV:**

Notice of Entry of Order Regarding Defendants' Motions to Dismiss  
Second Amended Complaint ..... AA751-756

Order Granting Petition for Writ of Prohibition.....AA757-783

Notice in Lieu of Remittitur.....AA784

Writ of Prohibition.....AA785-789

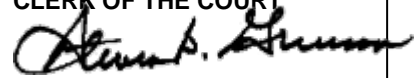
Order Granting Defendants' Motions to Dismiss Second Amended  
Complaint.....AA790-801

Notice of Entry of Order Granting Defendants' Motions to Dismiss  
Second Amended Complaint..... AA802-816

Notice of Appeal.....AA817-819



Judgment.....	AA820-821
Notice of Entry of Judgment.....	AA822-826
Amended Notice of Appeal.....	AA827-829
Notice of Appeal.....	AA830-832



1 COMP  
2 JAMES R. CHRISTENSEN ESQ.  
3 Nevada Bar No. 3861  
4 James R. Christensen PC  
5 601 S. 6<sup>th</sup> Street  
6 Las Vegas NV 89101  
7 (702) 272-0406  
8 (702) 272-0415 fax  
9 jim@jchristensenlaw.com  
10 Attorney for Plaintiff, DANIEL E. WOLFUS

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**EIGHTH JUDICIAL DISTRICT COURT**  
**DISTRICT OF NEVADA**

DANIEL E. WOLFUS,  
  
Plaintiff,  
  
vs.

CASE NO.: A-17-756971-C  
DEPT NO.: Department 10

**COMPLAINT FOR DAMAGES**

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

Defendants.

1 COMES NOW Plaintiff DANIEL E. WOLFUS ("Wolfus") by and through his  
2 counsel of record and hereby alleges, as follows:

3  
4 **PARTIES**

5 1. Plaintiff Daniel E. Wolfus ("Wolfus") is an individual who at all relevant  
6 times resides or resided in Los Angeles and Ventura Counties, California. Wolfus  
7 brings this action in his own capacity and as assignee of the rights and claims of The  
8 Wolfus Revocable Trust, Christine Wolfus and Daniel Wolfus (JTWROS), Devoney  
9 Wolfus, and Stephanie Wolfus.  
10

11  
12 2. Defendant Kenneth A. Brunk ("Brunk") is an individual who Wolfus is  
13 informed and believes and thereon alleges was and now is a resident of Colorado.

14 3. Defendant Richard D. Moritz ("Moritz") is an individual who Wolfus is  
15 informed and believes and thereon alleges was and now is a resident of Colorado.  
16

17 4. Defendant Bradley J. Blacketor ("Blacketor") is an individual who  
18 Wolfus is informed and believes and thereon alleges was and now is a resident of  
19 Colorado.  
20

21 5. Defendant Timothy J. Haddon ("Haddon") is an individual who Wolfus  
22 is informed and believes and thereon alleges was and now is a resident of Colorado.  
23

24 6. Defendant Martin M. Hale, Jr., ("Hale") is an individual who Wolfus is  
25 informed and believes and thereon alleges was and now is a resident of New York.

26 7. Defendant Trey Anderson ("Anderson") is an individual who Wolfus is  
27 informed and believes and thereon alleges was and now is a resident of New York.  
28

1           8. Defendant Richard Sawchak ("Sawchak") is an individual who Wolfus is  
2 informed and believes and thereon alleges was and now is a resident of Virginia.

3  
4           9. Defendant Frank Yu ("Yu") is an individual who Wolfus is informed and  
5 believes and thereon alleges was and now is a resident of Clark County, Nevada.

6           10. Defendant John W. Sheridan ("Sheridan") is an individual who Wolfus is  
7 informed and believes and thereon alleges was and now is a resident of Vancouver,  
8 Canada.

9  
10           11. Defendant Roger A. Newell ("Newell") is an individual who Wolfus is  
11 informed and believes and thereon alleges was and now is a resident of Colorado.

12  
13           12. Defendant Rodney D. Knutson ("Knutson") is an individual who Wolfus  
14 is informed and believes and thereon alleges was and now is a resident of Colorado.

15  
16           13. Defendant Nathaniel E. Klein ("Klein") is an individual who Wolfus is  
17 informed and believes and thereon alleges was and now is a resident of New York.

18           14. INV-MID, LLC; EREF-MID II, LLC and HCP-MID, LLC (collectively  
19 "Hale Investors") are each Delaware limited liability companies with their principal  
20 places of business in New York

21  
22           15. The true names, identities and capacities of defendants DOES 1 through  
23 25, inclusive are presently unknown to Wolfus who is informed and believes and  
24 thereon alleges that such defendants are liable to Wolfus in some manner presently  
25 undetermined as a result of the matters complained of herein. Wolfus will seek leave  
26  
27  
28

1 of Court, if necessary, to amend this Complaint when the true names, identities and  
2 capacities of said fictitiously-named defendants are identified.

### 3 4 **JURISDICTION AND VENUE**

5 16. Among other reasons, jurisdiction and venue are proper in the District  
6 Court of Nevada, County of Clark in that Defendants, or at least one of them, at all  
7 relevant times resided in and still resides in Clark County, Nevada.  
8

### 9 **COMMON ALLEGATIONS**

10 17. Midway Gold Corp. ("Midway") is a Canadian corporation incorporated  
11 under the Company Act of British Columbia on May 14, 1996 under a prior name  
12 which was changed to its current name on July 10, 2002. Midway became a reporting  
13 issuer in the Province of British Columbia on May 16, 1997 and shortly thereafter its  
14 common shares were listed on the Vancouver Stock Exchange, the predecessor of the  
15 TSX Venture Exchange. Midway subsequently became a reporting issue in the  
16 Province of Alberta and at all relevant times, Midway was a reporting company under  
17 the Securities Exchange Act of 1934 (the "Exchange Act"). Also during all relevant  
18 times, Midway's common shares were listed on both the NYSE Amex exchange and  
19 Tier 1 of the TSX.V. As a reporting company under the Exchange, Midway has been  
20 required to file periodic reports with the Securities and Exchange Committee (the  
21 "SEC"). Those reports are public documents which may be accessed over the internet  
22 at [https://www.sec.gov/cgi-bin/browse-](https://www.sec.gov/cgi-bin/browse-edgar?company=midway+gold&owner=exclude&action=getcompany)  
23 [edgar?company=midway+gold&owner=exclude&action=getcompany](https://www.sec.gov/cgi-bin/browse-edgar?company=midway+gold&owner=exclude&action=getcompany). This website  
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1 is commonly called Edgar. At all relevant times, Midway's principal executive offices  
2 were in Englewood, Colorado.

3  
4 18. Prior to 2008, Midway was an exploration stage company engaged in the  
5 acquisition, exploration, and, if warranted, development of gold and silver mineral  
6 properties in North America. As an exploration stage company, Midway had no  
7 revenues from operations. Instead, Midway relied on capital raised by the sale of its  
8 common shares to fund its operations.  
9

10 19. Prior to November 2008, Midway created its Disclosure Committee  
11 comprised of members of its Board of Directors. Midway reported in public filings  
12 that the purpose of the Disclosure Committee was to ensure that Midway complies  
13 with its timely disclosure obligations as required under applicable Canadian and  
14 United States securities laws. No other formal charter for this committee was ever  
15 publicly disclosed.  
16  
17

18 20. In November 2008, Wolfus became a director of Midway. At the time,  
19 Wolfus had 28 years of experience as a banker and investment banker with substantial  
20 experience in the capital markets. As an outside director, Wolfus was appointed to  
21 several committees of the Board.  
22  
23

24 21. In 2009, Wolfus became the Chairman of the Board and the Chief  
25 Executive Officer of Midway, serving in both capacities until May 18, 2012 when he  
26 was replaced by Brunk. As an officer of Midway, Wolfus ceased to be a member of  
27 any of the Board's committees.  
28

1           22.    At some time prior to April 2011, Midway decided to expand its  
2 membership to include both the Chief Executive Officer and the Chief Operating  
3 Officer, at which time Wolfus again became a member of the Disclosure Committee.  
4 Brunk at all relevant times was a member of the Disclosure Committee.  
5

6           23.    Wolfus began purchasing common stock of Midway in the open market  
7 in February 2008. As of May 1, 2012, Wolfus and his assignors owned 1,629,117  
8 shares of Midway common stock. In January 2014, Wolfus and/or his assignors  
9 acquired an additional 200,000 shares of Midway common stock. In September 2014,  
10 Wolfus and/or his assignors acquired an additional 1,000,000 shares of common stock  
11 and as of December 23, 2014, and after the sale of some shares, the combined  
12 shareholdings of Wolfus and/or his assignors was 2,402,251 shares of Midway  
13 common stock. Certain of these share purchases were made directly from Midway  
14 after Wolfus ceased to be an officer or director of Midway and were made pursuant to  
15 the exercise of stock options previously granted to Wolfus.  
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20           24.    At the time Wolfus became Chairman of the Board and CEO, Midway  
21 had the following properties in the exploratory stage where gold mineralization had  
22 been identified: Spring Valley, Pan, The Midway and Golden Eagle properties.  
23 Midway's Thunder Mountain, Roberts Creek, Gold Rock (formerly the Monte) Creek  
24 and Burnt Canyon projects were then in the early stage of gold and silver exploration.  
25 All of these projects are in Nevada except the Golden Eagle property in Washington.  
26  
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1           25. In October 2008, Midway entered into an exploration agreement and  
2 possible joint venture agreement with a subsidiary of Barrick Gold Corporation for its  
3 Spring Valley project. The Spring Valley project was located 20 miles northeast of  
4 Lovelock, Nevada.  
5

6           26. Of its remaining properties, Midway's Pan Gold Project ("Pan") appeared  
7 to be the most promising. The Pan Gold property was located at the northern end of  
8 the Pancake mountain range in western White Pine County, Nevada, approximately 22  
9 miles southeast of Eureka, Nevada, and 50 miles west of Ely, Nevada.  
10

11           27. Yu became a director of Midway also in November 2008 and served in  
12 that capacity at least up through June 2015. During that entire period, Yu served as a  
13 member or chairman of Midway's Disclosure Committee and Audit Committee.  
14

15           28. Newell became a Director of Midway in December of 2009 and  
16 continued in that capacity until August of 2014. During a portion of his tenure as a  
17 director, Newell served as a member of Midway's Disclosure Committee and Audit  
18 Committee.  
19

20           29. Prior to May, 2010, and based in part on substantial exploration of the  
21 Pan project, Midway made the decision to convert from a purely exploration company  
22 into a gold mining production company using the Pan project as its initial production  
23 mine.  
24

25           30. In May, 2010, Brunk was hired by Midway as its President and Chief  
26 Operating Officer with the primary assignment to bring the Pan project into  
27  
28



1 production. Brunk served in that capacity until May of 2012, at which time he also  
2 became the Chairman of the Board and Chief Executive Officer of Midway, replacing  
3 Wolfus in those positions. Brunk continued as Chairman of the Board until August  
4 2014 and as Chief Executive Officer and President until December 2014. At all times  
5 Brunk was a director of Midway, he was also a member of Midway's Disclosure  
6 Committee. Midway reported in public filings that Brunk holds a degree in  
7 Metallurgical Engineering from Michigan Technological University and throughout  
8 his career had conducted numerous feasibility studies and has been responsible for  
9 designing, constructing, staffing and operating multiple mining operations and  
10 improving process efficiencies around the world as well. Brunk was initially hired by  
11 Midway to take its Pan project, discussed below, into production.  
12

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16 31. On July 20, 2010, Midway publically announced the results of a  
17 favorable preliminary economic assessment ("PEA") for the Pan project. The PEA  
18 included an independent audit of an updated mineral resource estimate. prepared by  
19 the Company. The PEA was prepared by Gustavson Associates, LLC ("Gustavson")  
20 and was publically available.  
21

22  
23 32. Moritz was the Senior Vice President of Operations at Midway from July  
24 2010 to May 2014. Moritz was hired to primarily oversee the Pan project.

25  
26 33. On February 3, 2011, Midway filed an 8-K and Press Release with the  
27 SEC in which Midway reported that it was moving forward with its Pan project with  
28 "possible production as early as 2013" and that Midway was working on a

1 Prefeasibility Study for the Pan project. In its Annual Report filed on Form 10-K with  
2 the SEC at the same time, Midway stated that it was "currently transitioning itself  
3 from an exploration company to a gold production company with plans to advance the  
4 Pan gold deposit located in White Pine County, Nevada through to production by as  
5 early as 2013."  
6

7  
8 34. On April 4, 2011, Midway issued a press release filed with the SEC in  
9 which it reported that it had secured a "positive Prefeasibility Study" for the Pan  
10 Project. Midway also described in significant detail the method and manner by which  
11 Midway intended to mine the gold using conventional heap leaching methods prior to  
12 which the ore would be crushed by the primary in-pit mobile jaw crusher and  
13 secondary and tertiary cone crushers to a nominal 0.5 inches. Barren solution would  
14 then be distributed on the leach pad with drip tube emitters. The entire Prefeasibility  
15 Study performed by Gustavson was filed with SEDAR and the SEC and was  
16 publically available on Edgar.  
17  
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19  
20 35. In a September 12, 2011 press release filed with the SEC, Midway  
21 reported its engineering team was in the process of completing a mine plan and a  
22 Feasibility Study for the Pan Project and that the environmental team was working to  
23 complete a plan of operations for the proposed mine that will be submitted to the  
24 Bureau of Land Management ("BLM") for evaluation and development of an  
25 Environmental Impact Statement.  
26  
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1           36.    On October 6, 2011, Midway reported in a Press Release that Midway  
2 was negotiating with potential lenders to secure necessary funds for the Pan project.  
3 Several major lenders had expressed interest in providing the necessary funds required  
4 for the Pan project.  
5

6           37.    On November 1, 2011, Midway filed with the SEC a favorable Updated  
7 Mineral Resource Estimate for the Pan Project prepared by Gustavson.  
8

9           38.    On November 15, 2011, Midway reported by press release filed with the  
10 SEC the results of the Feasibility Study for the Pan project prepared by Gustavson  
11 ("Feasibility Study"). Midway stated that its mining plan would be to crush,  
12 agglomerate and place the ore on a heap leach pad with recoveries estimated to  
13 average 75%. Midway also reported that the capital costs to build the mine were  
14 estimated to be \$99 million, including \$8.2 million in working capital and \$6.8 million  
15 contingency funds with total production costs projected to be \$824/oz of gold  
16 recovered. At that time, the price of gold was ~\$1,700/oz.  
17  
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19           39.    On December 20, 2011, Midway filed the Feasibility Study with the SEC.  
20 Excerpts of that Feasibility Study are attached hereto as Exhibit 1 and incorporated  
21 hereat by this reference. Among other items, this Study provides a detailed history of  
22 the mineral exploration of the Pan project, estimated gold deposits, an extremely  
23 detailed mining plan, a budget of ~\$100 million for the project along with an  
24 extremely detailed breakdown of the needed equipment, and a projection of  
25 anticipated revenues at different levels of gold prices. Midway participated in the  
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28

1 creation of the Feasibility Study. The Feasibility Study was never publically updated  
2 or amended and this study formed the basis on which all necessary permits were  
3 sought.  
4

5 40. To bring the Pan project into production, two major events needed to  
6 occur.  
7

8 A. First, Midway needed to secure necessary permits, primarily  
9 environmentally related. The most difficult of these permits was the "Record of  
10 Decision" on a Final Environmental Impact Statement processed through the  
11 BLM. Additional environmental permits were also required to be issued by the  
12 State of Nevada. No assurances could be made in 2011 that these permits  
13 would be issued but the issuance of the permits would add significant value to  
14 Midway even if Pan was not taken into production. By year-end 2011, Midway  
15 had begun the permitting process for both the BLM and the Nevada Department  
16 of Environmental Protection ("NDEP"). These permits would be issued  
17 approving a specific mining plan and material changes to the plan would require  
18 modification or amendment of the environmental permits received. At all  
19 times, Midway sought these permits based upon the detailed mining plan set  
20 forth in the Feasibility Study, which required the three-stage crushing and  
21 agglomeration of the ore before it is placed on the heap leaching pad to a height  
22 not to exceed 30'. Generally, the heap leaching process required allowing a  
23 cyanide solution to percolate through the ore allowing the gold to attach to the  
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1 cyanide. The resulting gold enriched solution then would go through another  
2 process where the gold was then separated from the cyanide solution after  
3 which further processing would take place.  
4

5 B. The other event was that Midway would need to generate the  
6 necessary capital not only to fund the plan set forth in the Feasibility Study but  
7 also to fund Midway's other projects and general overhead. At the time,  
8 Midway believed that it would need ~\$120 million in capital to fund the  
9 foregoing up until the time that the Pan project was generating revenues.  
10 Midway was exploring raising this capital both by securing loans and through  
11 the sale of its common stock, which was the way Midway had historically  
12 raised capital.  
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15

16 41. On January 9, 2012, Midway issued a Press Release in which it  
17 announced that it qualified as a Development Stage Entity under SEC guidelines and  
18 that it had submitted a mine plan of operations to the BLM and the NDEP. The mine  
19 plan followed the plan set forth in the Feasibility Study with capital costs of ~\$100  
20 million.  
21

22 42. Sheridan became a Director of Midway in February 2012 and continued  
23 in that capacity until June 2015. During a portion of his tenure as a director, Sheridan  
24 served as a member or Chairman of Midway's Disclosure Committee and Audit  
25 Committee.  
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1           43. Prior to May 2012, Midway was approached by Hale, who was the CEO  
2 and Portfolio Manager of Hale Capital Partners, LP who was seeking to negotiate  
3 what became a \$70 million private placement of preferred stock with investors who  
4 Hale would secure. At the time these negotiations commenced, Wolfus was the CEO  
5 and Chairman of the Board of Midway and was the officer primarily involved in  
6 securing capital for Midway to fund its present and future operations. Moreover,  
7 Wolfus had been spending substantial time locating sources to fund the projected costs  
8 of both the Pan project and Midway's other on-going operations. Wolfus was opposed  
9 to the transaction proposed by Hale and Brunk was an ardent supporter of the  
10 transactions.  
11

12           44. In May 2012, Midway's Board of Directors decided to terminate Wolfus  
13 as its Chairman of the Board and Chief Executive Officer and replace him with Brunk.  
14 This change of control was effective May 18, 2012, and publically reported by Brunk  
15 and Midway on May 21, 2012. Wolfus continued as a director of Midway until its  
16 next annual meeting of shareholders; and, while Wolfus also remained a member of  
17 the Disclosure Committee, he was effectively excluded from all management  
18 decisions, excluded from all negotiations involving the proposed Hale transaction,  
19 never provided with any anticipated public disclosures for review and excluded from  
20 information he would need to review to perform any Disclosure Committee duties.  
21 Wolfus did receive board packages consisting of information provided to all directors  
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1 in anticipation of a quarterly Board of Directors meeting and did participate in Board  
2 of Director's meetings which occurred prior to June 2013.

3  
4 45. On August 2, 2012, the Board of Directors of Midway voted to increase  
5 the size of the Board from 5 to 6 members and appoint Klein as a director. Klein at  
6 the time was a Vice President of Hale Capital Partners. At the time of this  
7 appointment, Hale and Hale Capital Partners, LP were continuing to negotiate the  
8 terms of the proposed Hale transaction, which at the time had not been publically  
9 disclosed. Klein's directorship provides Hale and Hale Capital Partners, LP with  
10 access to Midway's books and records and staff.  
11  
12

13 46. By press release dated August 16, 2012, Midway and Brunk reported that  
14 engineering and permitting for the Pan project was advancing at a "rapid pace."  
15

16 47. By press release dated September 10, 2012, Midway and Brunk reported  
17 that it was on schedule for "start-up of production in mid-2014" on the Pan project.  
18

19 48. By 8-K filed with the SEC and by Press Release also filed with the SEC  
20 and both dated November 21, 2012, Midway announced that agreements had been  
21 signed for the private placement of \$70 million in Series A Preferred Shares of  
22 Midway to the Hale Investors and generally described the terms and conditions of that  
23 sale. True and correct copies of that 8-K and Press Release are attached hereto as  
24 Exhibits 2 and 3, respectively, and incorporated hereat by this reference. Wolfus is  
25 informed and believes and thereon alleges that at all relevant times the Hale Investors  
26 were controlled by Hale. Moreover, one of the terms of the forgoing transaction was  
27  
28

1 the creation of a "budget and work program committee, on which Hale or another  
2 director selected solely by the Hale Investors were required members. The purpose of  
3 this committee was to review and approve Midway's annual business and financing  
4 plans and capital and operating budgets or modifications thereto and its decisions had  
5 to be unanimous. Wolfus is informed and believes and thereon alleges that once this  
6 committee was formed, Hale and the Hale Investors acquired effective control of  
7 Midway and the Pan project.

10 49. On December 13, 2012, Midway filed an 8-K and Press Release with the  
11 SEC, a true and correct copy of which is attached hereto as Exhibit 4 and incorporated  
12 hereat by this reference. Exhibit 4 reports that the Hale transaction had closed, that  
13 Hale had become a director of Midway, and that Klein had resigned as a director  
14 although he continued to attend Board meetings thereafter. In addition, Midway  
15 reported the formation of the "Budget Work Plan Committee as alleged above with  
16 Brunk, Hale, Newell and Sheridan as its members. At all relevant times thereafter,  
17 Hale remained a director and a member of the Budget Work Plan Committee of  
18 Midway.

22 50. On March 22, 2013, Midway announced that a draft environmental  
23 impact statement was available for public comment. Wolfus is informed and believes  
24 and thereon alleges that this statement was based on the mining plan set forth in the  
25 Feasibility Study.



1           51. On April 19, 2013, Midway issued its Definitive Proxy Statement which  
2 was filed with the SEC. This statement disclosed that the Board had not nominated  
3 Wolfus as a director but had nominated Knutson as a director and had nominated  
4 Klein as a director selected by the Hale Investors.  
5

6           52. On June 20, 2013, Midway held its annual meeting of shareholders.  
7 Brunk, Hale, Newell, Sheridan, Yu, Knutson and Klein were each elected as directors.  
8 Wolfus ceased to be a director at this time, although Wolfus last participation with  
9 Midway's Board ceased some time before.  
10

11           53. On July 30, 2013, Midway issued and filed with the SEC a Press Release  
12 dated July 30, 2013, a true and correct copy of which is attached hereto as Exhibit 5  
13 and incorporated hereat by this reference. In that release, Midway reported that it was  
14 exploring ways to reduce costs for the Pan project, expected to issue a revised  
15 Feasibility Study in the third quarter of 2013, had made significant progress in  
16 permitting, was pursuing a combination of project and equipment financing  
17 alternatives, had received proposals from several major commercial funding sources to  
18 secure the necessary capital to fund the Pan project until a positive cash flow had been  
19 achieved, and expected to pour gold in August 2014.  
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23

24           54. On November 17, 2013, Midway issued and filed with the SEC a Press  
25 Release dated September 17, 2013, a true and correct copy of which is attached hereto  
26 as Exhibit 6 and incorporated hereat by this reference. In this release, Midway  
27 reported that it had conducted tests of ore from South Pan and determined that it did  
28

1 not need to be crushed prior to leaching and that a 92% recovery rate could be  
2 achieved after 58 days of leaching the ore at a height of 15'. This height is half of the  
3 30' height which the Feasibility Study called for. Midway stated that leaching  
4 uncrushed ore, called Run of Mine, would avoid the need to secure crushing  
5 equipment until operations moved to other areas of the Pan project. Midway also  
6 reported that it had retained Sierra Partners to assist it in finding the necessary capital  
7 to fund operations.  
8

10 55. At year-end 2013 and in addition to Pan, Midway was moving forward  
11 with its Gold Rock project, also in White Pine County Nevada, as its second operating  
12 gold mine. Midway's Spring Valley project was also progressing primarily funded by  
13 Barrick.  
14

15 56. On December 5, 2013, Blacketor became the Chief Financial Officer and  
16 Senior Vice President of Midway. Blacketor was also a member of the Disclosure  
17 Committee  
18

19 57. On December 20, 2013, Midway issued and filed with the SEC a Press  
20 Release, a true and correct copy of which is attached hereto as Exhibit 7 and  
21 incorporated hereat by this reference. In this release, Midway announced that it had  
22 received its Record of Decision for the Pan project which completes the BLM  
23 permitting process.  
24

25 58. As of December 31, 2013, Brunk, Hale, Newell, Sheridan, Yu, Knutson  
26 and Klein were each directors of Midway; Brunk was the Chairman, President and  
27  
28

1 Chief Executive officer of Midway; Blacketor was a Senior Vice President and Chief  
2 Financial Officer of Midway; Moritz was the Senior Vice President of Operations of  
3 Midway; Brunk, Blacketor, Newell, Yu and Klein were each members of the  
4 Disclosure Committee of Midway; Sheridan, Yu and Knutson were each members of  
5 the Audit Committee of Midway; Brunk, Hale, Sheridan, Yu and Klein were each  
6 members of the Budget/Work Plan Committee; and Newell, Sheridan and Yu were  
7 each members of the Environment, Health and Safety Committee. In those capacities,  
8 each was responsible for insuring that Midway publically disclosed all material  
9 information concerning the Pan project and that all publically disclosed information  
10 concerning the Pan project was true and complete, was not misleading and did not  
11 omitted material facts. The foregoing defendants are collectively referred to as the  
12 "2013 Control Defendants."

13  
14  
15  
16  
17 59. As of December 13, 2013, the 2013 Control Defendants knew each of the  
18 following facts ("2013 Undisclosed Facts") to be true, knew that each of the following  
19 facts would be material to any reasonable investor in Midway including Wolfus, and  
20 knew that none of those facts had been disclosed to the public generally or to Wolfus:

21  
22 A. Midway had been unable to raise sufficient cash either in the form  
23 of equity or debt to allow it to complete the Pan project in the manner set forth  
24 in the Feasibility Study as well as fund on-going operations until the Pan project  
25 produced sufficient revenues to cover those expenses;  
26  
27  
28

1           B.   Hale and the Hale Investors had blocked any consideration of the  
2           sale of either Midway's interest in the Spring Valley project or the Gold Rock  
3           project or any other material assets to generate additional revenues;  
4

5           C.   The environmental and other permits secured by Midway for the  
6           Pan project were based upon and required Midway to conduct mining  
7           operations in accordance with the mining plan submitted which called for the  
8           crushing and agglomeration of ore before it was placed on the leach pads and  
9           Midway had taken no steps to cause those permits to be modified to allow  
10          Midway to proceed using Run of Mine for the South Pit of the Pan project; and  
11

12          D.   Modifying the permits to permit Run of Mine would have been  
13          time consuming delaying the time when Midway could start the leaching  
14          process.  
15  
16

17          60.   On January 7, 2014, Wolfus notified Midway of his intention to exercise  
18          some of his stock options. Wolfus is informed and believes and thereon alleges that  
19          defendants and each of them were aware of this exercise. At the time Wolfus  
20          exercised these options he was not aware of any of the 2013 Undisclosed Facts, had  
21          no way of learning the 2013 undisclosed facts except from the 2013 Control  
22          Defendants, would not have exercised any of his options and would instead have sold  
23          his and his assignors' remaining Midway common shares.  
24  
25

26          61.   On January 15, 2014, Midway issued and filed with the SEC a Press  
27          Release dated, a true and correct copy of which is attached hereto as Exhibit 8 and  
28

1 incorporated hereat by this reference. In that release, Midway reported that the Pan  
2 project was "fully permitted and construction is underway with completion estimated  
3 for Q3 2014."  
4

5 62. Between January 7 and January 23, 2014, neither Midway nor any of the  
6 defendants provided Wolfus with any information not contained in Midway's then  
7 public filings, including the 2013 Undisclosed Facts.  
8

9 63. On January 23, 2014, Wolfus consummated his stock option exercise  
10 purchasing 200,000 shares at \$56/share.  
11

12 64. In its March 13, 2014, Annual Report on form 10-K, Midway reported  
13 that ore from the South Pan pit would be process Run of Mine and would not be  
14 crushed or agglomerated as provided in the Feasibility Study or the mining plan  
15 submitted to secure the necessary permits for the Pan project.  
16

17 65. In a Press Release issued the same day, Midway again reported that the  
18 Pan project was fully permitted and that construction was underway.  
19

20 66. On March 19, 2014, Midway announced in a Press Release that it has  
21 selected Ledcor CMI, Inc. as its mining contractor for the Pan project.  
22

23 67. On April 24, 2014, Midway issued a Press Release. But for the hand  
24 interlineations, Exhibit 9 attached hereto and incorporated hereat by this reference is a  
25 true and correct copy of that release. In that release, Midway announced its intention  
26 to reduce the capital costs for the Pan project as set forth in the Feasibility Study by  
27 using contract miners to mine the ore and by proceeding Run of Mine on the South Pit  
28

1 of the Pan project. Midway stated that Moritz had approved the release and that  
2 Midway was "well funded."

3  
4 68. On May 16, 2014, Midway reported that Moritz had resigned.

5 69. Midway's intention to use contract mining and Run of Mine was repeated  
6 in its May 21, 2014, quarterly report filed on Form 10-Q with the SEC.

7  
8 70. On May 22, 2014, Midway issued and filed with the SEC a Press  
9 Release, a true and correct copy of which is attached hereto as Exhibit 10 and  
10 incorporated hereat by this reference. This release announced the execution of a \$55  
11 million credit facility with Commonwealth Bank of Australia for the Pan project.  
12

13 71. On May 30, 2014, Midway filed with the SEC a prospectus for the sale of  
14 ~\$25 million worth of common stock in a prearranged sale. The prospectus updated  
15 an earlier registration statement. The funds were to be used in substantial part for the  
16 Pan project. Under applicable securities laws, this prospectus was required to disclose  
17 all material facts related to the Pan project, among other disclosures. However, this  
18 prospectus failed to disclose any of the 2013 Undisclosed Facts or any of the 2014  
19 Undisclosed Facts. In June 2014, Midway reported in a Press Release filed with the  
20 SEC that it completed this sale transaction.  
21  
22

23  
24 72. On June 19, 2014, Sawchak became a director of Midway and Knutson  
25 ceased to be a director of Midway. During a portion of his tenure as a director,  
26 Sawchak served as Chairman of Midway's Audit Committee.  
27  
28

1           73. On July 21, 2014, Midway issued and filed with the SEC a Press Release  
2 announcing that it had closed on its Credit Facility from Commonwealth Bank of  
3 Australia. Wolfus is informed and believes and thereon alleges that this Credit  
4 Facility was the largest loan Midway could secure.  
5

6           74. In July 2014, there was a flood at the Pan project which delayed the  
7 project. The flood was not reported until Midway's September 15, 2014, press release  
8 filed with the SEC.  
9

10           75. In its August 6, 2014, quarterly report filed on Form 10-Q with the SEC,  
11 Midway reported that it had made a 5-year contract mining deal with Ledcor and had  
12 paid a \$500,000 mobilization fee. On September 15, 2014, Midway reported in a  
13 Press Release filed with the SEC that Ledcor had in fact mobilized on site on July 21,  
14 2014. At no time did Midway disclose what control, if any, it had over the timing of  
15 Ledcor's mining operations or the control that it had over Ledcor's loading ore on the  
16 leach pads. Loading of the ore on the leach pads according to the applicable permits  
17 then effect had to be carefully monitored and supervised by qualified individuals and  
18 only after the ore had been crushed and agglomerated in the manner described in the  
19 Feasibility Study and the mining plan. Even if the ore was to be loaded on the leach  
20 pads Run of Mine, it still had to be carefully monitored and supervised by qualified  
21 individuals and only to a height not exceeding 15'. Additional ore could not be loaded  
22 on the leach pad until the approximately 2-month leaching process had occurred.  
23  
24  
25  
26  
27  
28 Wolfus was not aware of these facts until after June 2015.

1           76. By Press Release dated August 6, 2014, and filed with the SEC, Midway  
2 announced that Brunk would be leaving Midway but he remained until December  
3 2014.  
4

5           77. By Press Release dated August 19, 2014 and filed with the SEC, Midway  
6 announced the "retirement" of Newell and the appointment of Haddon as Chairman of  
7 the Board, replacing Brunk in that role. Haddon also became a member of the  
8 Environment, Health and Safety Committee of Midway.  
9

10           78. As of August 31, 2013, Brunk, Hale, Sawchak, Sheridan, Yu, Haddon  
11 and Klein were each directors of Midway; Haddon was Chairman of the Board, Brunk  
12 was the President and Chief Executive officer of Midway; Blacketor was a Senior  
13 Vice President and Chief Financial Officer of Midway;; Brunk, Blacketor, Yu and  
14 Klein were each members of the Disclosure Committee of Midway; Sheridan, Yu and  
15 Sawchak were each members of the Audit Committee of Midway; Brunk, Hale,  
16 Sheridan, Yu and Klein were each members of the Budget/Work Plan Committee; and  
17 Haddon, Sheridan and Yu were each members of the Environment, Health and Safety  
18 Committee. In those capacities, each was responsible for insuring that Midway  
19 publically disclosed all material information concerning the Pan project and that all  
20 publically disclosed information concerning the Pan project was true and complete,  
21 was not misleading and did not omitted material facts. The foregoing defendants are  
22 collectively referred to as the "2014 Control Defendants."  
23  
24  
25  
26  
27  
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1           79. As of August 31, 2014, the 2014 Control Defendants knew each of 2013  
2 Undisclosed Facts and the following addition facts ("collectively the 2014  
3 Undisclosed Facts") to be true, knew that each of those facts would be material to any  
4 reasonable investor in Midway including Wolfus, and knew that none of those facts  
5 had been disclosed to the public generally or to Wolfus:  
6

7           A. Ledcor was poised to commence mining operations at Pan loading  
8 ore directly on the leach pads but Midway did not have either a "qualified"  
9 person or a knowledgeable employee on site to supervise the loading of the ore  
10 on the leach pads;  
11

12           B. Midway had not sought or received modified permits to allow it to  
13 deviate from the mining plan submitted for the permits and as contained in the  
14 Feasibility Study; and  
15

16           C. Midway did not have the necessary facilities to process the gold  
17 solution once the leaching had been completed and it would be a considerable  
18 period of time before those facilities were constructed and permitted for  
19 operation.  
20

21           80. On September 5, 2014, Wolfus notified Midway of his intention to  
22 exercise some of his stock options. Wolfus is informed and believes and thereon  
23 alleges that defendants and each of them were aware of this exercise. At the time  
24 Wolfus exercised these options he still was not aware of any of the 2014 Undisclosed  
25  
26  
27  
28

1 Facts, had no way of learning the 2014 Undisclosed Facts except from the 2014  
2 Control Defendants, would not have exercised any of his options had he known.

3  
4 81. Between September 5 and 19, 2014, neither Midway nor any of the  
5 defendants provided Wolfus with any information not contained in Midway's then  
6 public filings, including the 2014 Undisclosed Facts.

7  
8 82. On September 19, 2014, Wolfus consummated his stock option exercise  
9 purchasing 1,000,000 shares at \$86/share.

10  
11 83. On September 15, 2014, Midway announced by Press Release filed with  
12 the SEC that Ledcor had commenced mining operations. The release further  
13 suggested that the facilities to process the mine would be ready by the end of  
14 September.

15  
16 84. On October 14, 2014, Midway announced that William Zisch would  
17 become President and Chief Executive Officer of Midway on or about December 10,  
18 2014 and that Brunk would depart Midway on Mr. Zisch's start date.

19  
20 85. By Current Report filed on form 8-K with the SEC and dated November  
21 4, 2014, Midway announced the resignation of Klein and the appointment of  
22 Anderson as a director by the Hale Investors. Anderson also became a member of the  
23 Budget/Work Plan Committee of Midway.

24  
25 86. In its November 16, 2014, quarterly report on Form 10-Q filed with the  
26 SEC, Midway again provided only favorable information concerning the Pan project.  
27  
28

1           87. By Press Release dated December 1, 2014 and filed with the SEC,  
2 Midway reported that it had begun receiving funds on its Credit Facility.

3  
4           88. On June 22, 2015, Midway announced that it was filing a voluntary  
5 petition for relief under Chapter 11 of the Bankruptcy Code.

6           89. As a result of the Midway Bankruptcy, all or virtually all of Midway's  
7 assets have been sold and there will be no funds or recoveries by common  
8 shareholders of Midway.

9  
10           90. Following the bankruptcy filing, Wolfus has learned or is otherwise  
11 informed and believed and thereon alleges that the following facts are true:  
12

13           A. As of the end of 2013, Midway lacked sufficient resources in the  
14 form of capital or debt financing to bring the Pan project to a successful mining  
15 operation;  
16

17           B. Hale and the Hale Investors blocked Midway from selling assets to  
18 create necessary capital;  
19

20           C. In late 2013 or early 2014, material disagreements arose between  
21 Brunk and Hale, which resulted in Hale taking effective control of Midway and  
22 the Pan project even though Hale lacked the ability to manage the Pan project;  
23

24           D. The ore in the entire Pan project was extremely clayey and would  
25 need to be crushed and agglomerated prior to leaching in order to profitably and  
26 timely extract gold but rather than cut other costs so that the crushing and  
27  
28

1 agglomeration equipment could be acquired, defendants and each of them  
2 decided not to purchase this necessary equipment;

3  
4 E. Costly equipment was purchased by Midway which was not  
5 permitted to be used on the Pan project resulting in costly delays;

6  
7 F. Midway never received the appropriate permits for Run of Mine  
8 operations;

9  
10 G. Midway allowed Ledcor to overload the leach pads in a manner  
11 which violated its operating permits and resulted in an inability to successfully  
12 leach the gold from the ore;

13  
14 H. Midway allowed Ledcor to begin loading the leach pads before it  
15 was capable of either performing the necessary heap leaching or capable of  
16 processing and refining for sale the resulting gold solution.

17 91. Effective June 2, 2016, Wolfus, Brunk, Moritz, Blacketer, Haddon, Hale,  
18 Anderson, Sawchak, Yu, Sheridan, Newell, Knutson and Klein entered into a tolling  
19 agreement, a true and correct copy of which is attached hereto as Exhibit 11 and  
20 incorporated hereat by this reference. This agreement tolled the statute of limitations  
21 on all claims from June 2, 2016 through September 25, 2016.  
22  
23  
24  
25  
26  
27  
28

**FIRST CAUSE OF ACTION**  
**(SECURITIES FRAUD AGAINST**  
**THE 2013 AND 2014 CONTROL DEFENDANTS)**

92. Wolfus realleges the allegations contained in Paragraphs 1 through 91 as though fully set forth hereat.

93. This is a claim for securities fraud based upon the California Corporate Securities Law of 1968, California *Corporations Code* § 25000, *et seq.* (the "Act")

94. At all relevant times, Wolfus was and now is a resident of California. All purchases of Midway's common stock were made by Wolfus either for his own account or for his assignors. All purchases of Midway's common stock were made by Wolfus in California.

95. Midway's common shares are securities as defined in California *Corporations Code* § 25019.

96. As of October 8, 2013, Wolfus or his assignors owned 6,404,085 shares of Midway's common stock.

97. On January 23, 2014, Wolfus purchased in California 200,000 shares of Midway's common stock directly from Midway through the exercise of stock options at a purchase price of \$.56 per share. At that time, Midway's common stock was selling on the NYSE Amex exchange at \$1.27 per share and its price was rising reaching nearly \$1.50 per share within the next 30 days.

1           98. Midway was the issuer of the 200,000 shares purchased by Wolfus and as  
2 such was liable for any written or oral communication contained in its public filings  
3 that included any untrue statement of a material fact or omits to state a material fact  
4 necessary to make the statements made, considering the circumstances under which  
5 the statements were made, not misleading.  
6

7           99. Each of the 2013 Control Defendants are jointly and severally liable to  
8 Wolfus with Midway because of their positions as officers, directors and committee  
9 members of Midway and as such are deemed to be "controlling persons" under the  
10 Act. Moreover, each of the 2013 Control Defendants controlled Midway and had the  
11 ability and duty to ensure that its public filing was true, correct and complete, were  
12 not misleading and did not fail to disclose material facts.  
13

14           100. In violation of California *Corporations Code* § 25401, the 2013 public  
15 filings by Midway which discussed the Pan project were materially false and  
16 misleading by failing to timely disclose each of the 2013 Undisclosed Facts and the  
17 failure by the 2013 Control Defendants to disclose the 2013 Undisclosed Facts was  
18 intentional and was done to encourage investors to retain and purchase Midway's  
19 common stock.  
20

21           101. In exercising his options in January 2014, Wolfus relied on the public  
22 filings of Midway and was unaware of the 2013 Undisclosed Facts. Had Wolfus  
23 known any of the 2013 Undisclosed Facts, Wolfus would not have exercised any  
24  
25  
26  
27  
28

1 options in January 2014 or thereafter and would have sold both his and his assignors  
2 common stock when the stock reached its peak in February 2014.

3  
4 102. On September 19, 2014, Wolfus purchased in California 1,000,000 shares  
5 of Midway's common stock directly from Midway through the exercise of stock  
6 options at a purchase price of \$.86 per share. At that time, Midway's common stock  
7 was selling on the NYSE Amex exchange at \$1.03 per share and its price was rising  
8 reaching nearly \$1.20 per share within the next 30 days.

9  
10 103. Midway was the issuer of the 1,000,000 shares purchased by Wolfus and  
11 as such was liable for any written or oral communication contained in its public  
12 filings that included any untrue statement of a material fact or omits to state a  
13 material fact necessary to make the statements made, considering the circumstances  
14 under which the statements were made, not misleading.

15  
16 104. Each of the 2014 Control Defendants are jointly and severally liable to  
17 Wolfus with Midway because of their positions as officers, directors and committee  
18 members of Midway and as such are deemed to be "controlling persons" under the  
19 Act. Moreover, each of the 2014 Control Defendants controlled Midway and had the  
20 ability and duty to ensure that its public filing was true, correct and complete, were  
21 not misleading and did not fail to disclose material facts.

22  
23 105. In violation of California *Corporations Code* § 25401, the pre-September  
24 2014 public filings by Midway which discussed the Pan project were materially false  
25 and misleading by failing to timely disclose each of the 2014 Undisclosed Facts and  
26  
27  
28

1 the failure by the 2014 Control Defendants to disclose the 2014 Undisclosed Facts  
2 was intentional and was done to encourage investors to retain and purchase Midway's  
3 common stock.  
4

5 106. In exercising his options in September 2014, Wolfus relied on the public  
6 filings of Midway and was unaware of the 2014 Undisclosed Facts. Had Wolfus  
7 known any of the 2014 Undisclosed Facts, Wolfus would not have exercised any  
8 options in September 2014 and would have sold both his and his assignors remaining  
9 common stock when the stock reached its peak in October 2014.  
10  
11

12 107. All the common stock owned by Wolfus and his assignors has become  
13 valueless except to the extent sold after January 23, 2014.  
14

15 108. As a result of misrepresentations and omissions of material facts, Wolfus  
16 has been damaged in an amount to be proven at trial, but no event less than  
17 \$8,000,000. Wolfus is entitled to interest at 10% per annum and reasonable attorney  
18 fees.  
19

20 **SECOND CAUSE OF ACTION**

21 **(BREACH OF FIDUCIARY DUTY**

22 **AGAINST THE 2013 AND 2014 CONTROL DEFENDANTS)**  
23

24 109. Wolfus realleges the allegations contained in Paragraphs 1 through 91,  
25 94, 96, 97, 101, 102, 106 and 107 as though fully set forth hereat.  
26

27 110. This is a claim for breach of fiduciary duty against the 2013 Control  
28 Defendants arising out of their failure to disclose the 2013 Undisclosed Facts prior to



1 Wolfus stock option exercise in January 2014 and against the 2014 Control  
2 Defendants for their failure to disclose the 2013 Undisclosed Facts and the 2014  
3 Undisclosed Facts prior to Wolfus stock option exercise in September 2014.  
4

5 111. Each of the 2013 Control Defendants and 2014 Control Defendants were  
6 fiduciaries and owed Wolfus the fiduciary duty of full disclosure of all material facts  
7 then existing prior to Wolfus' exercise of his stock options in 2014.  
8

9 112. Each of the 2013 Control Defendants and 2014 Control Defendants  
10 breached their fiduciary duties to Wolfus by failing to disclose the 2013 Undisclosed  
11 Facts prior to January 1, 2014 and by failing to disclose the 2014 Undisclosed Facts  
12 prior to September 2014.  
13

14 113. As a result of defendants' breach of their fiduciary duties to Wolfus,  
15 Wolfus has been damaged in an amount to be proven at trial, but no event less than  
16 \$8,000,000. Wolfus is entitled to interest at 10% per annum.  
17  
18

19 114. Defendants conduct was fraudulent entitling Wolfus to an award of  
20 punitive damages in an amount to be proven at trial.  
21

### 22 **THIRD CAUSE OF ACTION**

#### 23 **(AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY** 24 **AGAINST ALL DEFENDANTS)**

25 115. Wolfus realleges the allegations contained in Paragraphs 1 through 91,  
26 94, 96, 97, 101, 102, 106, 107 and 114 as though fully set forth hereat.  
27  
28

1           116. This is a claim for aiding and abetting Midway in breaching its fiduciary  
2 duties of full disclosure of all material facts then existing related to the Pan project  
3 prior to Wolfus' exercise of his stock options in 2014.  
4

5           117. Wolfus is informed and believes and thereon alleges that Does 1 through  
6 2 are the underlying beneficial owners of the Hale Investors and as such indirectly  
7 through Hale controlled the Pan project and Midway at all times from and after June  
8 2013.  
9

10           118. Midway at all times after Wolfus ceased to be a member of Midway's  
11 Board of Directors owed Wolfus of full disclosure of all relevant facts related to the  
12 Pan project prior to selling 1,200,000 shares of Midway's common stock. to Wolfus  
13 in 2014.  
14

15           119. Midway breached its fiduciary duties to Wolfus in 2014 by failing to  
16 disclose the 2013 Undisclosed Facts prior to January 2014 and by failing to disclose  
17 the 2014 Undisclosed Facts prior to September 2014.  
18

19           120. Defendants, and each of them, knew of Midway's fiduciary duties to  
20 Wolfus and materially aided and abetted Midway in breaching its fiduciary duties.  
21

22           121. Wolfus has been damaged in an amount to be proven at trial, but no event  
23 less than \$8,000,000. Wolfus is entitled to interest at 10% per annum.  
24  
25  
26  
27  
28

1 **FOURTH CAUSE OF ACTION**

2 **(FRAUD AGAINST THE 2013 AND 2014 CONTROL DEFENDANTS)**

3 122. Wolfus realleges the allegations contained in Paragraphs 1 through 91,  
4 94, 96, 97, 101, 102, 106, 107 and 114 as though fully set forth hereat.  
5

6 123. This is a claim for common law fraud for failing to disclose the 2013  
7 Undisclosed Facts and the 2014 Undisclosed Facts related to the Pan project prior to  
8 Wolfus' exercise of his stock options in 2014.  
9

10 124. The 2013 Control Defendants intentionally defrauded Wolfus by failing  
11 to disclose or causing Midway to disclose the 2013 Undisclosed Facts.  
12

13 125. The 2014 Control Defendants intentionally defrauded Wolfus by failing  
14 to disclose or causing Midway to disclose the 2014 Undisclosed Facts.  
15

16 126. Wolfus was ignorant of the 2013 Undisclosed Facts in January 2014, had  
17 no ability to learn the 2013 Undisclosed Facts prior to January 2014, and relied upon  
18 the absence of any disclosure of the 2013 Undisclosed Facts in exercising his stock  
19 options in January 2014 and in not selling all of his and his assignors' shares of  
20 Midway common stock prior to March, 2014.  
21

22 127. Wolfus was ignorant of the 2013 Undisclosed Facts and the 2014  
23 Undisclosed Facts in September 2014, had no ability to learn any of those facts prior  
24 to September 2014, and relied upon the absence of any of any disclosure of those  
25 facts in exercising his stock options in September 2014 and in not selling all of his  
26 and his assignors' shares of Midway common stock prior to November, 2014.  
27  
28

1 128. Wolfus first learned of the 2013 Undisclosed Facts and the 2014  
2 Undisclosed Facts after June 2015.

3  
4 129. Wolfus has been damaged in an amount to be proven at trial, but no event  
5 less than \$8,000,000. Wolfus is entitled to interest at 10% per annum.

6 **FOURTH CAUSE OF ACTION**

7  
8 **(NEGLIGENT MISREPRESENTATION**

9 **AGAINST THE 2013 AND 2014 CONTROL DEFENDANTS)**

10 130. Wolfus realleges the allegations contained in Paragraphs 1 through 91,  
11 94, 96, 97, 101, 102, 106, 107 and 114 as though fully set forth hereat.

12  
13 131. This is a claim for common law negligent misrepresentation for  
14 negligently failing to disclose the 2013 Undisclosed Facts and the 2014 Undisclosed  
15 Facts related to the Pan project prior to Wolfus' exercise of his stock options in 2014.

16  
17 132. The 2013 Control Defendants negligently failed to disclose or cause  
18 Midway to disclose the 2013 Undisclosed Facts to Wolfus prior to his exercise of  
19 stock options in January 2014.

20  
21 133. The 2014 Control Defendants negligently failed to disclose or cause  
22 Midway to disclose the 2014 Undisclosed Facts to Wolfus prior to his exercise of  
23 stock options in September 2014.

24  
25 134. Because of their status, the 2013 Control Defendants and the 2014  
26 Control Defendants owed Wolfus a duty of full disclosure of all relevant facts related  
27  
28

1 to the Pan project prior to causing or allowing Midway to sell common stock to  
2 Wolfus.

3  
4 135. Wolfus was ignorant of the 2013 Undisclosed Facts in January 2014, had  
5 no ability to learn the 2013 Undisclosed Facts prior to January 2014, and relied upon  
6 the absence of any disclosure of the 2013 Undisclosed Facts in exercising his stock  
7 options in January 2014 and in not selling all of his and his assignors' shares of  
8 Midway common stock prior to March, 2014.

9  
10 136. Wolfus was ignorant of the 2013 Undisclosed Facts and the 2014  
11 Undisclosed Facts in September 2014, had no ability to learn any of those facts prior  
12 to September 2014, and relied upon the absence of any of any disclosure of those  
13 facts in exercising his stock options in September 2014 and in not selling all of his  
14 and his assignors' shares of Midway common stock prior to November, 2014.

15  
16  
17 137. Wolfus first learned of the 2013 Undisclosed Facts and the 2014  
18 Undisclosed Facts after June 2015.

19  
20 138. Wolfus has been damaged in an amount to be proven at trial, but no event  
21 less than \$8,000,000. Wolfus is entitled to interest at 10% per annum.

22  
23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment against Defendant(s), and each of  
25 them, as follows:

26 1. For general damages in an amount in excess of ten thousand dollars  
27 (\$10,000.00);  
28

2. For special damages in an amount to be proven at trial;
3. For costs of suit and attorney's fees; and,
4. For such other and further relief as the Court may deem just and proper.

Dated this 13<sup>th</sup> day of June, 2017.

/s/ James R. Christenen

James R. Christensen Esq.  
Nevada Bar No. 3861  
James R. Christensen PC  
601 S. 6<sup>th</sup> Street  
Las Vegas NV 89101  
(702) 272-0406  
(702) 272-0415 fax  
jim@jchristensenlaw.com  
Attorney for Plaintiff

# EXHIBIT 1

**NI 43-101 TECHNICAL REPORT**  
**Feasibility Study**  
**for the**  
**PAN GOLD PROJECT**  
**White Pine County, Nevada**

**PREPARED FOR MIDWAY GOLD CORP.**



**Effective date: November 15, 2011**

**Signature date: December 19, 2011**

**Prepared by**  
**William J. Crawl, R.G. QP MMSA**  
**Donald E. Hulse, P.E.**  
**Terre A. Lane, QP MMSA**  
**Donald J. Baker, PhD QP MMSA**  
**Jennifer J. Brown, P.G. Registered Member SME**





## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
<b>1 SUMMARY</b>	<b>1</b>
1.1 INTRODUCTION	1
1.2 PROPERTY DESCRIPTION AND OWNERSHIP	1
1.3 GEOLOGY AND MINERALIZATION	2
1.4 CONCEPT AND STATUS OF EXPLORATION	2
1.5 MINERAL RESOURCE ESTIMATE	2
1.5.1 North Pan	3
1.5.2 Central and South Pan	3
1.6 MINERAL RESERVE ESTIMATE	6
1.6.1 Whittle Optimization	6
1.6.2 Calculation Parameters	6
1.6.3 Cutoff Grade Equations	7
1.6.4 Mineral Reserve Estimate	7
1.7 CONCLUSIONS AND RECOMMENDATIONS	9
<b>2 INTRODUCTION</b>	<b>10</b>
2.1 PURPOSE	10
2.2 QUALIFIED PERSONS	10
2.3 SITE VISIT OF QUALIFIED PERSON	10
2.4 SOURCES OF INFORMATION	11
2.5 UNITS OF MEASURE	11
<b>3 RELIANCE ON OTHER EXPERTS</b>	<b>12</b>
<b>4 PROPERTY DESCRIPTION AND LOCATION</b>	<b>13</b>
4.1 LOCATION	13
4.2 MINERAL TENURE, AGREEMENTS, AND EXPLORATION PERMITS	14
4.2.1 Mineral Rights	14
4.2.1.1 Newark Valley Mining Agreement	15
4.2.1.2 Additional Claims	16
4.3 ENVIRONMENTAL LIABILITIES	16
4.4 EXPLORATION PERMITS AND JURISDICTIONS	17
<b>5 ACCESSIBILITY, CLIMATE, LOCAL RESOURCES, INFRASTRUCTURE, AND PHYSIOGRAPHY</b>	<b>19</b>
5.1 ACCESSIBILITY, INFRASTRUCTURE, AND LOCAL RESOURCES	19
5.2 TOPOGRAPHY, ELEVATION, VEGETATION, AND CLIMATE	19
<b>6 HISTORY</b>	<b>21</b>
6.1 EXPLORATION HISTORY	21
6.2 HISTORICAL RESOURCE AND RESERVE ESTIMATES	22
<b>7 GEOLOGICAL SETTING AND MINERALIZATION</b>	<b>23</b>
7.1 REGIONAL GEOLOGY	23
7.2 PROPERTY GEOLOGY	26

7.2.1	<i>Lithological Units</i> .....	26
7.2.1.1	Simonson Dolomite (Ds) - Devonian.....	26
7.2.1.2	Devils Gate Limestone (Dd) - Late Devonian.....	26
7.2.1.3	Pilot Shale (MDp) - Late Devonian to Early Mississippian.....	26
7.2.1.4	Joana Limestone (Mj) - Mississippian.....	26
7.2.1.5	Chainman Shale (Mc) - Mississippian.....	27
7.2.1.6	Diamond Peak Formation (Md) - Mississippian.....	27
7.2.1.7	Ely Limestone (Pe) - Pennsylvanian.....	27
7.2.1.8	Rib Hill Siltstone - Permian.....	27
7.2.1.9	Kaibab Limestone - Permian.....	27
7.2.1.10	Intrusives - Cretaceous.....	27
7.2.1.11	Volcanic Units (Tv) - Tertiary.....	28
7.2.2	<i>Structural Geology</i> .....	28
7.3	<b>MINERALIZATION</b> .....	28
7.3.1	<i>Alteration</i> .....	29
7.3.2	<i>Geometry of Mineralization</i> .....	30
8	<b>DEPOSIT TYPES</b> .....	33
9	<b>EXPLORATION</b> .....	34
9.1	PREVIOUS OPERATORS EXPLORATION WORK.....	34
9.2	MIDWAY EXPLORATION WORK.....	34
9.2.1	<i>Surface Geochemistry</i> .....	34
9.2.2	<i>Rock Samples</i> .....	34
9.2.3	<i>Geologic Mapping</i> .....	35
9.2.4	<i>Geophysical Surveys</i> .....	35
10	<b>DRILLING</b> .....	36
10.1	INTRODUCTION.....	36
10.2	DRILLING BY MIDWAY GOLD CORP. ....	36
10.2.1	<i>Drilling Procedures and Conditions</i> .....	39
10.2.2	<i>Drill hole Collar Surveys</i> .....	39
10.2.3	<i>Down hole Surveys</i> .....	39
10.2.4	<i>Extent of Drilling</i> .....	40
10.2.5	<i>MIDWAY Data Compilation and Grid Conversion</i> .....	40
10.3	SAMPLING METHOD AND APPROACH.....	40
11	<b>SAMPLE PREPARATION, ANALYSES, AND SECURITY</b> .....	42
11.1	SAMPLE PREPARATION AND ANALYSIS PROCEDURES.....	42
12	<b>DATA VERIFICATION</b> .....	43
12.1	CHECK ASSAYS.....	43
12.2	MIDWAY GOLD CORP. QA/QC PROGRAMS.....	45
12.3	TWIN HOLE STUDY.....	46
13	<b>MINERAL PROCESSING AND METALLURGICAL TESTING</b> .....	49
13.1	ORE SAMPLING AND TEST WORK.....	49
13.2	ONGOING METALLURGICAL TEST WORK.....	49
13.2.1	<i>Head Assays</i> .....	50
13.2.2	<i>XRF Analyses</i> .....	51

13.2.3	XRD Analysis	52
13.2.4	ICP Analysis	52
13.2.5	Crushability Work and Abrasion Index	55
13.2.6	Static Bucket Leach Tests for Surface Samples	56
13.2.7	Bottle Roll Leach Tests	57
13.2.8	Column Leach Tests	60
13.2.8.1	Assay-by-Size Fraction for Gold	60
13.2.8.2	Test Results	62
13.2.8.3	Percent Slump	64
13.2.8.4	Drain Down and Maximum Percolation Rate	64
13.2.8.5	Tailing Analysis	65
13.2.8.6	Pregnant Solution Analysis	65
13.2.9	Coarse Ore Bottle Roll Leach Tests on North Pan Samples	68
13.2.10	Agglomeration Tests	68
13.2.11	Carbon Loading Tests	69
13.2.12	Metallurgical Testing Conclusions	70
14	MINERAL RESOURCE ESTIMATES	71
14.1	DATA USED FOR THE GOLD GRADE ESTIMATION	71
14.2	DENSITY	71
14.3	METHODOLOGY	72
14.4	ESTIMATION DOMAINS	73
14.4.1	Creation of Domains	73
14.4.1.1	North Pan	75
14.4.1.2	Central Pan	75
14.4.1.3	South Pan	75
14.4.2	Grade Shell Estimation	77
14.4.2.1	North Pan	77
14.4.2.2	Central and South Pan	77
14.5	COMPOSITING	79
14.6	CAPPING OF ASSAYS	79
14.7	VARIOGRAPHY	80
14.8	ESTIMATION METHODOLOGY	82
14.8.1	North Pan	82
14.8.2	Central and South Pan	82
14.9	ESTIMATE VALIDATION	84
14.10	MINERAL RESOURCE CLASSIFICATION	86
14.11	MINERAL RESOURCE TABULATION	86
15	MINERAL RESERVE ESTIMATES	89
15.1.1	Whittle Pit Optimization	89
15.1.2	Calculation Parameters	89
15.1.2.1	Cutoff Grade Equations	89
15.1.3	Mineral Reserve Estimate	90
16	MINING METHODS	93
16.1	OPEN PIT MINE PLAN	93
16.1.1	Pit Design	95
16.1.1.1	Geotechnical Pit Slope Evaluation	98

16.1.2	Waste Dumps.....	100
16.1.3	Annual Mine Plans.....	100
16.1.4	Geotechnical Design- Heap Leach Pad, Ponds, Stormwater Diversions.....	109
16.1.5	Site Scale Hydrology.....	109
16.1.5.1	Deep Bedrock Aquifer.....	111
16.1.5.2	Water Quality.....	113
16.1.5.3	Alluvial Aquifer.....	113
16.1.6	Mining Equipment.....	115
16.1.7	Support Equipment.....	115
16.2	PREPRODUCTION DEVELOPMENT.....	116
16.3	PRODUCTION SCHEDULE.....	116
16.3.1	Pit Design Schedule Sequence.....	117
16.3.2	Production Schedule Parameters.....	118
16.3.3	Drill and Blast Parameters.....	119
16.3.4	Load and Haul Parameters.....	120
17	RECOVERY METHODS.....	122
17.1.1	Process Description.....	122
17.1.2	Production Rate and Products.....	122
17.1.3	Primary Crushing.....	124
17.1.4	Secondary Crushing.....	126
17.1.5	Agglomeration.....	128
17.1.6	Conveying and Stacking.....	130
17.1.7	Heap Leach.....	132
17.1.8	ADR Gold Recovery Plant.....	132
18	PROJECT INFRASTRUCTURE.....	135
18.1	FACILITIES.....	135
18.1.1	Office Building.....	135
18.1.2	Warehouse and Laboratory.....	135
18.1.3	Truck Shop & Maintenance.....	135
18.1.4	Guard House.....	135
18.1.5	Process Building.....	135
18.2	ROADS.....	140
18.3	SECURITY.....	140
18.4	SEPTIC SYSTEMS.....	140
18.5	WATER.....	140
18.6	POWER.....	141
18.7	FUEL DEPOT.....	143
18.8	COMMUNICATIONS.....	143
19	MARKET STUDIES AND CONTRACTS.....	144
20	ENVIRONMENTAL STUDIES, PERMITTING AND SOCIAL OR COMMUNITY IMPACT.....	145
20.1	PERMITS REQUIRED.....	145
21	CAPITAL AND OPERATING COSTS.....	148
21.1	CAPITAL COST ESTIMATE.....	148
21.1.1	Basis.....	148
21.1.2	Mine Development.....	148

21.1.3	Mine Equipment	149
21.1.4	Mine Buildings	149
21.1.5	Facilities and Infrastructure	150
21.1.6	Primary Crushing and Coarse Ore Storage	152
21.1.7	Secondary Crushing, Agglomeration and Stacking	153
21.1.8	Leaching	155
21.1.9	Process Ponds	155
21.1.10	Storm Water Diversions	156
21.1.11	Gold Recovery	156
21.1.12	Owner's Costs	158
21.1.13	EPCM	159
21.1.14	Working Capital	159
21.1.15	Sustaining Capital	160
21.1.16	Contingency	161
21.2	OPERATING COST ESTIMATE	162
21.2.1	Project Cost and Basis	162
21.2.2	Project Manpower	164
21.2.3	Mine Operating Costs	167
21.2.4	Mine Equipment Costs	168
21.2.5	Mine Operating Cost Statistics	168
21.2.6	Plant Operating Costs	169
21.2.7	Plant Equipment Costs	170
21.2.8	Plant Operating Cost Statistics	171
21.2.9	General and Administration Costs	171
21.2.10	General and Administration Cost Statistics	172
21.2.11	Insurance	172
21.2.12	Net Proceeds of Mines/Property Tax	172
21.2.13	Contingency	173
21.2.14	Income Tax	173
22	ECONOMIC ANALYSIS	174
22.1	FINANCIAL ANALYSIS	174
22.2	COMMODITY PRICE(S)	174
22.3	ROYALTIES AND TAXES	174
22.4	CASH FLOW ANALYSIS	174
22.5	ECONOMIC PROJECTION	175
22.6	SENSITIVITY ANALYSIS	175
22.6.1	Price	175
22.6.2	Operating Cost, Capital Cost and Gold Grade	176
23	ADJACENT PROPERTIES	178
24	OTHER RELEVANT DATA AND INFORMATION	179
25	INTERPRETATION AND CONCLUSIONS	180
26	RECOMMENDATIONS	181
27	REFERENCES	182

## LIST OF FIGURES

<u>Figure</u>	<u>Page</u>
Figure 4-1 Property Location .....	13
Figure 4-2 Claim Boundary .....	14
Figure 7-1 Regional Geology, Pancake RangeLocal Geology .....	24
Figure 7-2 Pan Stratigraphy .....	25
Figure 7-3 East-West Section across North Pan, Looking North .....	31
Figure 7-4 East-West Section across South Pan, Looking North .....	32
Figure 10-1 Pan Project MIDWAY Drill Hole Distribution .....	38
Figure 12-1 MIDWAY Rig Duplicates .....	44
Figure 12-2 Grade vs. Depth Comparison 1 .....	47
Figure 12-3 Grade vs. Depth Comparison 2 .....	48
Figure 14-1 Estimation Domains .....	74
Figure 14-2 South and Central Pan Grade Shells at Bench 6600 .....	76
Figure 14-3 A Spherical Variogram for the Major Axis the South Pan Breccia Domain .....	81
Figure 14-4 Block Model Gold Content of Bench Elevation 6600 .....	85
Figure 16-1 General Site Layout .....	94
Figure 16-2 Final Pits, Heap and Waste Dumps .....	97
Figure 16-3 Mine Plan – Year 1 .....	101
Figure 16-4 Mine Plan – Year 2 .....	102
Figure 16-5 Mine Plan – Year 3 .....	103
Figure 16-6 Mine Plan – Year 4 .....	104
Figure 16-7 Mine Plan – Year 5 .....	105
Figure 16-8 Mine Plan – Year 6 .....	106
Figure 16-9 Mine Plan – Year 7 .....	107
Figure 16-10 Mine Plan – Year 8 .....	108
Figure 16-11 Conceptual Cross Section of the Pan Project Proposed Mine Area .....	110
Figure 16-12 Deep Borehole Locations .....	112
Figure 16-13 Existing Wells in Alluvial Aquifer .....	114
Figure 17-1 General Process Flow .....	123
Figure 17-2 Primary Jaw Crusher .....	125
Figure 17-3 Secondary and Tertiary Crushing .....	127
Figure 17-4 Agglomerator .....	129
Figure 17-5 Teletackler .....	131
Figure 17-6 ADR Processing Facility General Arrangement .....	133
Figure 18-1 Office Building .....	136
Figure 18-2 Lab and Warehouse Facility .....	137
Figure 18-3 Truck and Maintenance Shop .....	138
Figure 18-4 Guard House .....	139
Figure 18-5 Powerline Alignment .....	142
Figure 21-1 Contingency Calculation .....	161
Figure 22-1 Gold Price Sensitivity .....	176
Figure 22-2 Economic Sensitivities .....	177

## LIST OF TABLES

<u>Table</u>	<u>Page</u>
Table 1-1 North Pan Mineral Resource .....	4
Table 1-2 Central Pan Mineral Resource .....	4
Table 1-3 South Pan Mineral Resource .....	5
Table 1-4 Total Pan Mineral Resource .....	5
Table 1-5 Pan Project Mineral Reserves Estimate .....	7
Table 4-1 Pan Royalty Schedule .....	15
Table 10-1 Midway Drilling Exploration Summary .....	36
Table 10-2 2011 Drill Hole Summary .....	37
Table 11-1 Drill Data by Analytical Method .....	42
Table 12-1 Descriptive Statistics of MIDWAY Duplicate Rig Samples .....	45
Table 13-1 Lithology of Composite Samples .....	49
Table 13-2 Head Analyses of Composite Samples .....	50
Table 13-3 XRF Analyses .....	51
Table 13-4 XRD Test Results .....	52
Table 13-5 ICP Analyses of Composite Samples .....	53
Table 13-6 Crushability and Abrasion Test Results .....	56
Table 13-7 Static Bucket Leach Test Results .....	57
Table 13-8 Bottle Roll Cyanidation Test Results – Composite Sample, 6-mesh .....	58
Table 13-9 Bottle Roll Cyanidation Test Results – Composite Sample, 200-mesh .....	59
Table 13-10 Assay-by-Size Fraction Data .....	61
Table 13-11 Summary of Column Leach Test Results for North Pan Samples .....	62
Table 13-12 Summary of Column Leach Test Results for South Pan Samples .....	63
Table 13-13 Percolation Test Results .....	64
Table 13-14 Residue Assay-by-Size Data .....	65
Table 13-15 A and B, Pregnant Solution Analyses .....	66
Table 13-16 Bottle Roll Cyanide Leach Test Results .....	68
Table 13-17 Agglomeration Test Results .....	69
Table 14-1 Core Sample Density Test Results .....	72
Table 14-2 Pan Project Raw Assay Summary Statistics Au ≥ 0.001 opt .....	78
Table 14-3 Domain Composite Data .....	79
Table 14-4 Pan Variogram Parameters .....	81
Table 14-5 Pan Estimation Parameters .....	83
Table 14-6 Pan Estimation Parameters .....	83
Table 14-7 Pan Estimation Parameters .....	83
Table 14-8 North Pan Mineral Resource .....	86
Table 14-9 Central Pan Mineral Resource .....	87
Table 14-10 South Pan Mineral Resource .....	87



Table 14-11 Total Pan Mineral Resource .....	88
Table 15-1 Calculated Cutoffs .....	90
Table 15-2 North and Central Pan Mineral Reserves .....	91
Table 15-3 South Pan and Total Pan Project Mineral Reserves .....	92
Table 16-1 Pit Design Criteria .....	95
Table 16-2 Slope Design Recommendations .....	99
Table 16-3 Initial Mine Equipment .....	115
Table 16-4 Additional Mine Equipment .....	115
Table 16-5 Mine Support Equipment .....	116
Table 16-6 Pan Project Mine Development .....	116
Table 16-7 Yearly Production Schedule .....	117
Table 16-8 Leach Pad Construction Materials .....	118
Table 16-9 Production Schedule by Pit Design .....	118
Table 16-10 Mine Schedule Parameters .....	119
Table 16-11 Equipment Availabilities/Utilization .....	119
Table 16-12 Drill and Blast Parameters .....	120
Table 16-13 Load and Haul Parameters .....	121
Table 17-1 Estimated Reagent Consumption .....	130
Table 17-2 ADR Plant Equipment List .....	134
Table 18-1 Maximum Water Usage .....	141
Table 18-2 Pan Project Estimated Electrical Load .....	143
Table 20-1 Major Permits and Authorizations Required for Project Development .....	145
Table 21-1 Pan Project Capital Cost Estimate .....	148
Table 21-2 Pan Project Mine Development .....	149
Table 21-3 Mine Mobile Equipment .....	149
Table 21-4 Mine Buildings .....	150
Table 21-5 Pan Project Infrastructure, Facilities, and Buildings .....	152
Table 21-6 Primary Crushing and Material Handling .....	153
Table 21-7 Secondary Crushing and Stacking .....	154
Table 21-8 Secondary Tertiary Crusher .....	155
Table 21-9 Leach Pad Cost Estimate .....	155
Table 21-10 Process Pond Cost Estimate .....	156
Table 21-11 Storm Water Diversions .....	156
Table 21-12 Gold Recovery Process .....	157
Table 21-13 Plant Mobile Equipment .....	158
Table 21-14 Owner's Costs .....	159
Table 21-15 Working Capital Costs .....	160
Table 21-16 Additional Mine Equipment .....	160
Table 21-17 Mine Sustaining Capital Major Rebuilds .....	161
Table 21-18 Pan Operating Cost Summary by Cost Type .....	162



Table 21-19 Pan Operating Cost Summary by Cost Center .....	163
Table 21-20 Pan Summary Average Yearly Manpower Costs .....	164
Table 21-21 Mine Manpower .....	165
Table 21-22 Processing Department Manpower .....	166
Table 21-23 General and Administration Department Manpower .....	167
Table 21-24 Pan Yearly Mine Operating Costs .....	167
Table 21-25 Yearly Equipment Hourly Cost .....	168
Table 21-26 Mine Operating Cost Statistics .....	169
Table 21-27 Pan Yearly Plant Operating Costs .....	170
Table 21-28 Yearly Plant Equipment and Non-Equipment Costs .....	170
Table 21-29 Yearly Plant Operating Cost Statistics .....	171
Table 21-30 Pan Yearly General and Administration Costs .....	171
Table 21-31 Yearly Plant Operating Cost Statistics .....	172
Table 22-1 Economic Projection .....	175

December 19, 2011

xix



## **1 SUMMARY**

### **1.1 Introduction**

Gustavson Associates, LLC (Gustavson) was commissioned by Midway Gold Corp. to complete a Feasibility Study for the Pan Gold Project in White Pine County, Nevada, based on the Updated Mineral Resource Estimate dated September 1, 2011. The Feasibility Study is intended to provide a comprehensive technical and economic analysis of the selected development option for the mineral project. This study includes detailed assessments of realistically assumed mining, processing, metallurgical, economic, legal, environmental, social, and other relevant considerations which have successfully demonstrated the economic viability of the project. The purpose of this report is to document the results of the Feasibility Study in compliance with Canadian National Instrument 43-101 Standards of Disclosure for Mineral Projects.

The Pan gold deposit is a sediment-hosted, bulk tonnage Carlin-type gold deposit along the prolific Battle Mountain-Eureka gold trend in east-central Nevada. Midway Gold US Inc. (hereafter referred to as MIDWAY) has drilled, sampled, and mapped the Pan deposit since acquiring the project in 2007. MIDWAY completed 61,875 ft of drilling in 162 holes in 2007 and 2008, and released an updated mineral resource estimate in December 2009. Gustavson performed an independent audit of the 2009 mineral resource estimate as part of a Preliminary Economic Assessment in 2010, and MIDWAY conducted a 14-hole (5774 ft) diamond core drilling program to obtain additional metallurgical and geotechnical data during the latter half of that same year. Gustavson completed a mineral reserve and mine plan as part of the March 2011 Preliminary Feasibility Study, which included an updated geologic model and mineral resource based on data obtained through February 28, 2011. MIDWAY has since completed an additional 33 holes totaling 27,795 ft.

### **1.2 Property Description and Ownership**

The Pan Project is located in White Pine County, Nevada, approximately 22 miles southeast of Eureka and 50 miles west of Ely. The project area consists of 10,373 acres on 550 contiguous, unpatented federal mining claims controlled by MIDWAY. The property is located in the rolling hills of the Pancake Range in the Basin and Range physiographic province. Terrain is gentle to moderate throughout most of the project area, with no major stream drainages. Elevation of the property ranges from 6,400 to 7,500 ft above mean sea level.

At present, no infrastructure or power is in place at the Pan site. A relatively low voltage distribution line crosses the valley floor near a local ranch approximately 5 miles away. A higher voltage transmission line, 69 kV, with capacity suitable for mining and processing operations, is located approximately 14 miles from the project site and six miles north of US 50. Water to support exploration drilling is available from ranch wells approximately 3 miles to the west of the property. Logistical support is available in Eureka, Ely, and Elko, all of which currently

December 19, 2011

1



support large open pit mining operations. Mining personnel and resources for operations at Pan are expected to be available from Eureka, White Pine, and Elko Counties.

### **1.3 Geology and Mineralization**

The geology of the Pan property is dominated by Devonian to Permian carbonate and clastic sedimentary rocks cut by the Pan fault, a steeply west dipping fault that trends north-south. The Pan fault juxtaposes gently west dipping sedimentary units on the west side of the fault with steeply northeast dipping sedimentary units on the east side. Post-mineral Tertiary volcanic rocks nonconformably overlie the faulted Devonian-Permian sedimentary units.

Gold mineralization at Pan occurs in a Carlin-style, epithermal, disseminated, sediment-hosted system. The distribution of the mineralization is controlled by structure, particularly with regard to the development of breccias, and by sedimentary bedding and alteration along unit contacts. Gold deposits within the project area generally occur as elongate bodies associated with structures and dissolution/hydrothermal breccia bodies hosted by the Pilot Shale and, to a lesser extent, the Devils Gate Limestone. Gold deposits also occur in a more tabular fashion within altered and mineralized sedimentary horizons.

### **1.4 Concept and Status of Exploration**

MIDWAY's exploration program includes core and reverse circulation drilling, geologic mapping, geochemical sampling, and geophysical surveys at the Pan property. This comprehensive program has helped to define the geologic occurrence of gold mineralization and identify additional exploration targets on the Pan property. The level of exploration in individual target areas varies from rock and soil sampling with anomalous results to drill holes which reveal anomalous to ore-grade gold values, as determined during the February 2011 Preliminary Feasibility Study. Geochemical and geophysical targets merit additional work, primarily drilling, to test anomalous rock and soil geochemical results. Additional drilling is needed in portions of the deposit to expand and better understand existing drill intercepts.

### **1.5 Mineral Resource Estimate**

Gustavson completed an updated mineral resource estimate for the Pan Project in November 2011. As part of that study, Gustavson created a model to estimate the mineral resources at Pan based on data provided by MIDWAY as of September 1, 2011. No new drilling occurred at North Pan and the February 2011 resource model was not modified during the current study. Gold mineralization in Central and South Pan was re-evaluated during the course of this resource update. Drill hole data including collar coordinates, MIDWAY surveys, sample assay intervals, and geologic logs were provided in a secure Microsoft Access database. Surficial geology maps and cross-sections detailing alteration and lithology were also provided in electronic format. The database has been updated to include the additional 33 reverse circulation drill holes completed by MIDWAY in 2011.

December 19, 2011

2



Gustavson modeled and estimated the mineral resource by constructing geologic, alteration, and mineral domains from the MIDWAY cross sections, and by geostatistically analyzing the drill data to define the parameters required to estimate gold grades in the 3-Dimensional (3D) block model. Leapfrog 3D® geological modeling software was used to create 3D stratigraphic, alteration, and mineral domain solids. MicroModel® software was used to estimate gold grades.

MIDWAY defined the structure, stratigraphy, and alteration of the North, Central, and South Pan zones on 1 inch = 50 ft cross-sections spaced 200 feet apart and oriented east to west. Gustavson combined the MIDWAY subsurface interpretations with surface geology to create 3D stratigraphic and alteration models.

A block model was created for the Pan Deposit using blocks that are 20 feet wide, 20 feet long, and 20 feet high. Each of the blocks was assigned attributes of gold grade, mineral resource classification, rock density, tonnage factor, lithology, alteration, and a grade classification. The blocks were then assigned to a domain as appropriate to assist in estimation.

#### 1.5.1 North Pan

All of the domains were estimated in 3 passes and each block was assigned a classification of measured, indicated, or inferred. The resource classification of each block was based on a factor of the average sample distance in an anisotropic direction as established by the second structure range from the variogram model for the domain being estimated. The measured class utilized a ½ ellipsoid variogram search distance. Indicated was set at a full variogram search distance and inferred was set at 2 times the variogram distance. As an additional requirement, Gustavson limited the measured and indicated estimation data to include only the fire assay intervals. Inferred resource was estimated using all available assay data. Ordinary Kriging was used to estimate grade for all domains.

#### 1.5.2 Central and South Pan

All of the domains were estimated by using large search ellipses oriented in the direction of maximum continuity to provide an estimation of the gold grade within every block inside of the grade shells. The resource classification of each block was based on a factor of the closest sample distance in an anisotropic direction as established by the second structure range from the variogram model for the domain being estimated. The measured class utilized a ½ ellipsoid variogram search distance. Indicated resource was set at a full variogram search distance and inferred resource was set at 2 times the variogram distance. Each domain was estimated using a minimum of 5 composites with no more than 4 composites from a single drill hole. A maximum of 12 composites was allowed to better represent the local variability. Ordinary Kriging was used to estimate grade for all domains.

The mineral resource estimate is summarized in Tables 1-1 through 1-4. This mineral resource estimate includes all drill data obtained as of September 1, 2011, and has been independently verified by Gustavson.

**Table 1-1 North Pan Mineral Resource**

<b>North Pan Measured Resource</b>			
<b>Opt</b>	<b>Tons</b>	<b>Au Opt</b>	<b>oz</b>
0.008	13,994,415	0.0168	234,844
0.006	15,592,007	0.0158	245,850
<b>0.004</b>	<b>18,597,319</b>	<b>0.0140</b>	<b>260,404</b>
<b>North Pan Indicated Resource</b>			
0.008	10,565,126	0.0146	154,540
0.006	12,702,959	0.0133	169,135
<b>0.004</b>	<b>17,006,845</b>	<b>0.0112</b>	<b>189,823</b>
<b>North Pan Measured plus Indicated Resource</b>			
0.008	24,559,541	0.0159	389,384
0.006	28,294,966	0.0147	414,985
<b>0.004</b>	<b>35,604,164</b>	<b>0.0126</b>	<b>450,228</b>
<b>North Pan Inferred Resource</b>			
0.008	122,858	0.0112	1,376
0.006	233,476	0.0091	2,129
0.004	511,402	0.0067	3,427

**Table 1-2 Central Pan Mineral Resource**

<b>Central Pan Measured Resource</b>			
<b>Opt</b>	<b>Tons</b>	<b>Au Opt</b>	<b>oz</b>
0.008	2,329,227	0.0146	33,991
0.006	2,837,448	0.0132	37,482
<b>0.004</b>	<b>3,802,537</b>	<b>0.0111</b>	<b>42,192</b>
<b>Central Pan Indicated Resource</b>			
0.008	1,895,266	0.0122	23,216
0.006	2,524,520	0.0109	27,623
<b>0.004</b>	<b>4,053,056</b>	<b>0.0086</b>	<b>34,885</b>
<b>Central Pan Measured plus Indicated Resource</b>			
0.008	4,224,493	0.0135	57,207
0.006	5,361,968	0.0121	65,105
<b>0.004</b>	<b>7,855,593</b>	<b>0.0098</b>	<b>77,077</b>
<b>Central Pan Inferred Resource</b>			
0.008	240,912	0.0103	2,470
0.006	290,465	0.0096	2,802
0.004	722,079	0.0066	4,741

Table 1-3 South Pan Mineral Resource

South Pan Measured Resource			
Opt	Tons	Au Opt	oz
0.008	13,826,998	0.0182	251,350
0.006	15,584,480	0.0169	263,423
<b>0.004</b>	<b>18,297,337</b>	<b>0.0151</b>	<b>276,641</b>
South Pan Indicated Resource			
0.008	17,440,794	0.0158	275,596
0.006	20,764,856	0.0144	298,599
<b>0.004</b>	<b>26,469,130</b>	<b>0.0123</b>	<b>325,863</b>
South Pan Measured plus Indicated Resource			
0.008	31,267,792	0.0169	526,946
0.006	36,349,336	0.0155	562,022
<b>0.004</b>	<b>44,766,467</b>	<b>0.0135</b>	<b>602,504</b>
South Pan Inferred Resource			
0.008	1,588,716	0.0184	29,274
0.006	1,933,540	0.0164	31,651
0.004	3,096,599	0.0120	37,093

Table 1-4 Total Pan Mineral Resource

Pan Total Measured Resource			
Opt	Tons	Au Opt	oz
0.008	30,150,640	0.0173	520,186
0.006	34,013,935	0.0161	546,756
<b>0.004</b>	<b>40,697,193</b>	<b>0.0142</b>	<b>579,238</b>
Pan Total Indicated Resource			
0.008	29,901,186	0.0152	453,351
0.006	35,992,335	0.0138	495,357
<b>0.004</b>	<b>47,529,031</b>	<b>0.0116</b>	<b>550,571</b>
Pan Total Measured plus Indicated Resource			
0.008	60,051,826	0.0162	973,537
0.006	70,006,270	0.0149	1,042,112
<b>0.004</b>	<b>88,226,224</b>	<b>0.0128</b>	<b>1,129,809</b>
Pan Total Inferred Resource			
0.008	1,952,486	0.0170	33,120
0.006	2,457,481	0.0149	36,581
0.004	4,330,080	0.0105	45,261

## 1.6 **Mineral Reserve Estimate**

The February 2011 Prefeasibility Study demonstrated that the Pan Project is economically viable, and this Feasibility Study has strengthened that conclusion. Based on the results of the Feasibility Study, Measured and Indicated Mineral Reserves within the designed pits are considered Proven and Probable Reserves as defined by the Canadian Institute of Mining, Metallurgy, and Petroleum. The final reserves are reported using a 0.008 Au opt cutoff for the North and Central pits, and a 0.006 Au opt cutoff for the South pit. Cutoffs were chosen to maximize the NPV of the project and do not necessarily represent the minimum economic cutoff. Pit designs are based on geologic criteria provided in the April 2011 Pit Slope Evaluation report produced by Golder Associates. Geologic solids created for each lithological unit were used as a guide during the pit design process. The limestone units were designed with a 50° inter-ramp wall angle assuming pre-split blasting in these units; all other lithological units were designed with a 45° inter-ramp wall angle.

### 1.6.1 Whittle Optimization

Gustavson generated a series of optimization shells on the South and North resource blocks, ranging from \$236/oz to \$2360/oz. Forty six shells were generated separately for the North and South resource areas. Heap leach recoveries of 65% and 85%, for North and South Pan, respectively, were used in the optimization runs. The general parameters were based on preliminary estimates of operating cost, and incorporated recommendations from the April 2011 Pit Slope Evaluation report. Mining costs were estimated to be \$1.09/ton of material moved for the pit optimization. Crushing, agglomeration, leaching, general and administration, and gold recovery costs were estimated at \$3.71/ton of ore. Only Measured and Indicated Resources were considered in the evaluation; Inferred resources were treated as waste.

### 1.6.2 Calculation Parameters

The series of pit optimizations were graphed and evaluated to compare cash flows, net present values (NPV's) and internal rates of return (IRR's). The final South pit and the North pit optimizations are based on shells at a cost less than the three year trailing average price of

\$1200/oz in order to achieve a higher NPV and overall lower cash cost per ounce. The option of mining the entire South Pan pit before the North Pan pit was evaluated during the scheduling process. Although the South Pan pit has a 20% higher recovery factor, mining the South Pan in phases results in a higher IRR by delaying the high strip of the Phase 2 South Pit until the end of the mine life. The option of mining the North pit first was also evaluated, but the higher recovery from the South Pan pit (85%, compared to 65% from North Pan) and shorter estimated leach times render the South pit the more favorable option to mine first.

### 1.6.3 Cutoff Grade Equations

The mineral reserve estimate for the Pan Project is based on designed open pits with maximized revenues at a gold price of \$1180 per ounce. Cutoff grades of 0.006 Au opt (0.21 gpt) in the South pit and 0.008 Au opt (0.27 gpt) in the North & Central pits provide the highest NPV for the project.

### 1.6.4 Mineral Reserve Estimate

Using the NI 43-101 Updated Mineral Resource Estimate filed in November 2011, Proven and Probable Reserves of 53,254,000 tons at a grade of 0.016 opt are contained in the mineral resource at Pan. A total of 864,000 oz of gold are contained in the Pan Project mineral reserves. Estimated mineral reserves for the Pan Project are presented in Table 1-5.

**Table 1-5 Pan Project Mineral Reserves Estimate**

<b>North and Central Pan</b> <b>Cutoff Grade:</b> <b>0.008 opt / 0.274 g/tonnes</b>	<b>Tons</b>	<b>Gold</b>	
	<b>(x 1000)</b>	<b>opt</b>	<b>ounces (x 1000)</b>
<b>North Pan</b>			
Proven Reserves	12,625	0.018	223.30
Probable Reserves	10,993	0.015	162.66
Proven & Probable Reserves	23,618	0.016	385.95
Inferred within Designed Pit	351	0.012	4.29
Waste within Designed Pit	27,823		
Total tons within Designed Pit	51,791		
<b>Central Pan</b>			
Proven Reserves	1,799	0.015	27.78
Probable Reserves	1,125	0.013	15.00
Proven & Probable Reserves	2,924	0.015	42.78
Inferred within Designed Pit	75	0.010	0.77
Waste within Designed Pit	5,387		
Total tons within Designed Pit	8,386		
<b>Sub Total - North + Central</b>			
Proven Reserves	14,423	0.017	251.08
Probable Reserves	12,119	0.015	177.66
Proven & Probable Reserves	26,542	0.016	428.74
Inferred within Designed Pit	426	0.012	5.06
Waste within Designed Pit	33,210		
Total tons within Designed Pit	60,177		



Table 1-5 cont.

<b>South Pan - Phases 1 and 2</b> <b>Cutoff Grade:</b> <b>0.006 opt / 0.206 g/tonnes</b>	<b>Tons</b>	<b>Gold</b>	
	<b>(x 1000)</b>	<b>opt</b>	<b>ounces (x 1000)</b>
<b>South Pan - Phase 1</b>			
Proven Reserves	11,856	0.018	215.44
Probable Reserves	7,593	0.016	119.26
Proven & Probable Reserves	19,449	0.017	334.70
Inferred within Designed Pit	56	0.010	0.55
Waste within Designed Pit	31,887		
Total tons within Designed Pit	51,392		
<b>South Pan - Phase 2</b>			
Proven Reserves	1,548	0.014	21.01
Probable Reserves	5,716	0.014	79.80
Proven & Probable Reserves	7,263	0.014	100.81
Inferred within Designed Pit	212	0.016	3.39
Waste within Designed Pit	29,485		
Total tons within Designed Pit	36,961		
<b>Sub Total - Phase 1 + 2</b>			
Proven Reserves	13,404	0.018	236.46
Probable Reserves	13,308	0.015	199.05
Proven & Probable Reserves	26,713	0.016	435.51
Inferred within Designed Pit	269	0.015	3.94
Waste within Designed Pit	61,372		
Total tons within Designed Pit	88,353		
<b>Total Reserves</b>			
	<b>(x 1000)</b>	<b>opt</b>	<b>ounces (x 1000)</b>
Proven Reserves	27,827	0.018	487.51
Probable Reserves	25,427	0.015	376.71
Proven & Probable Reserves	53,254	0.016	864.22
Inferred within Designed Pit	695	0.013	9.0
Waste within Designed Pit	94,582		
Total tons within Designed Pit	148,531		

## 1.7 **Conclusions and Recommendations**

As a result of the work done as part of and resulting from this Feasibility Study, Gustavson concludes:

- The Pan deposit now contains over 1.1 million ounces of gold in Measured and Indicated Mineral Resource categories using a 0.004 opt cutoff.
- There continues to be good potential for the discovery of additional Mineral Resources at Pan.
- There is a proven and probable Mineral Reserve of 53,254,000 tons, containing 864,000 ounces of gold.
- The Pan project is an economic mining project generating approximately \$122 million net present value, and an internal rate of return of 32.4% at a gold price of \$1200.

Based on the results of this Feasibility Study, Gustavson recommends:

- Continuation of drilling to fill-in areas that are promising development areas, specifically between the North and South pits. MIDWAY is planning on \$ 1.5 million in drilling for the next two years.
- Finalization of engineering for infrastructure, buildings, mining, and site facilities. This is currently estimated at \$0.86 million (included in capital costs in the Feasibility Study)
- Support for the EIS and permitting, estimated to be \$ 0.4 million over the next 2 years.
- Construction of the access road which is estimated at \$ 1.7 million.
- Drilling and testing of a water well, estimated at \$0.1 million.
- Purchase of long-lead equipment estimated at approximately \$ 2.0 million.

December 19, 2011

9



## 6 HISTORY

### 6.1 Exploration History

Mr. Lyle Campbell discovered the Pan deposit while prospecting in 1978, when he encountered gold-bearing jasperoid, now referred to as Campbell Jasperoid. Mr. Campbell staked 147 original unpatented mining claims, and transferred ownership of the claims to the LFC Trust in 1986. The LFC Trust was bought out in 2008 and is now owned by NVMC.

Several companies have conducted exploration on the property since 1978. The following paragraphs summarize exploration activities at Pan based on information provided in previously issued technical reports:

- Mr. Campbell leased his claims to Amselco in 1978. The majority of drilling exploration carried out by Amselco took place in North Pan.
- In 1986, Hecla conducted a drilling exploration program in the central portion of the Pan property.
- Echo Bay leased the claims in 1987 and completed an exploration drilling program that resulted in the discovery of gold mineralization at South Pan.
- The Pan property was explored under a joint venture between Alta Gold and Echo Bay from 1988 through 1991. Drilling was conducted in both North and South Pan, in conjunction with geologic mapping, geochemical sampling, and an induced polarization geophysical survey. The Alta Bay joint venture initiated studies in support of mining development, including an archaeological survey, additional metallurgical test work, and preliminary mineral reserve calculations and mine designs.
- Alta Gold retained ownership of the Pan Project after dissolution of the joint venture until 1992. Drilling exploration was reported, but the associated holes have not been validated and are not included in the modern day resource database.
- In 1993, Southwestern Gold Corporation completed drilling exploration on a small section of claims that they held at that time west of North Pan. The associated drill hole collars have been identified in the field, but no other information has been validated and these holes are not included in the modern resource database.
- The Pan Project was dormant from 1993 until 1999, when Latitude leased the property from LFC Trust. Between 1999 and 2001, Latitude explored the property as part of a joint venture with Degerstrom. Geologic mapping and outcrop and soil sampling were completed under the joint venture, as was drilling and metallurgical testing.
- Latitude drilling focused primarily on North and South Pan mineralization, but also resulted in the discovery of mineralization in the modern day Syncline and Black

Stallion target areas of Central Pan. Latitude terminated the joint venture with Degerstrom in mid-2001, and joint ventured the project to Metallica later that year. From LFC Trust files, it appears that Metallica focused on thermal imagery and lineament study of satellite data over the Pan area. No additional subsurface exploration work was completed. The LFC Trust terminated the lease agreement with Latitude in 2002, citing Latitude's inability to meet financial obligations.

- Castleworth Ventures, Inc. leased the Pan claims in January 2003. The company completed drilling exploration and conducted geologic mapping, sampling, metallurgical test work, and resource estimation. On April 16, 2007, Pan Nevada Gold Corporation (formerly Castleworth Ventures, Inc.) was acquired by MIDWAY.
- Since acquiring the Pan Project in 2007, MIDWAY has completed 209 holes, of which 195 were reverse circulation and 14 diamond core drill holes for a total of 95,394 ft. Drilling efforts have generally focused on expanding known mineralization, but also include confirmation drilling and exploration drilling in several potential target areas on the Pan property. In addition to drilling exploration, MIDWAY has completed geologic mapping, soil and outcrop sampling, and gravity survey.

## 6.2 Historical Resource and Reserve Estimates

Historical resource and reserve estimates are described in detail in the 2005 report produced by Mine Development Associates (MDA). These resource and reserve estimates have not been verified, are not considered reliable, are not relevant to the updated mineral resource presented in this report, and are mentioned here for historical completeness only.

December 19, 2011

22



## **16 MINING METHODS**

### **16.1 Open Pit Mine Plan**

The Pan gold deposit contains mineralization at or near the surface and spatially distributed in a manner that is ideal for open pit mining methods. Gold grade distribution and the results of preliminary mineral processing testing indicate that ore from the Pan deposit can be processed by conventional heap leaching methods. The method of material transport evaluated for this study is open pit mining using a 21.6-yd<sup>3</sup> front end shovel as the main loading unit with a 16-yd<sup>3</sup> front end loader as a backup loading unit. The ore will be loaded into 150-ton haul trucks and transported to the primary jaw crusher, which will be set up at the mouth of the pit. The primary jaw crusher is a semi-mobile unit mounted on skids that will be moved to the mouth of whichever pit is being mined. The crushed ore material will be conveyed to the secondary crushing site, crushed to P80 ½-inch (North) and P80 1½-inch (South), agglomerated, and conveyed to the heap leach pad. The waste material will be loaded into the 150-ton haul trucks and hauled directly to the waste dump. The truck haul method was chosen over in-pit mobile crushers and mobile conveyors in order to simplify waste dump construction and allow for more flexibility in day to day mining activities.

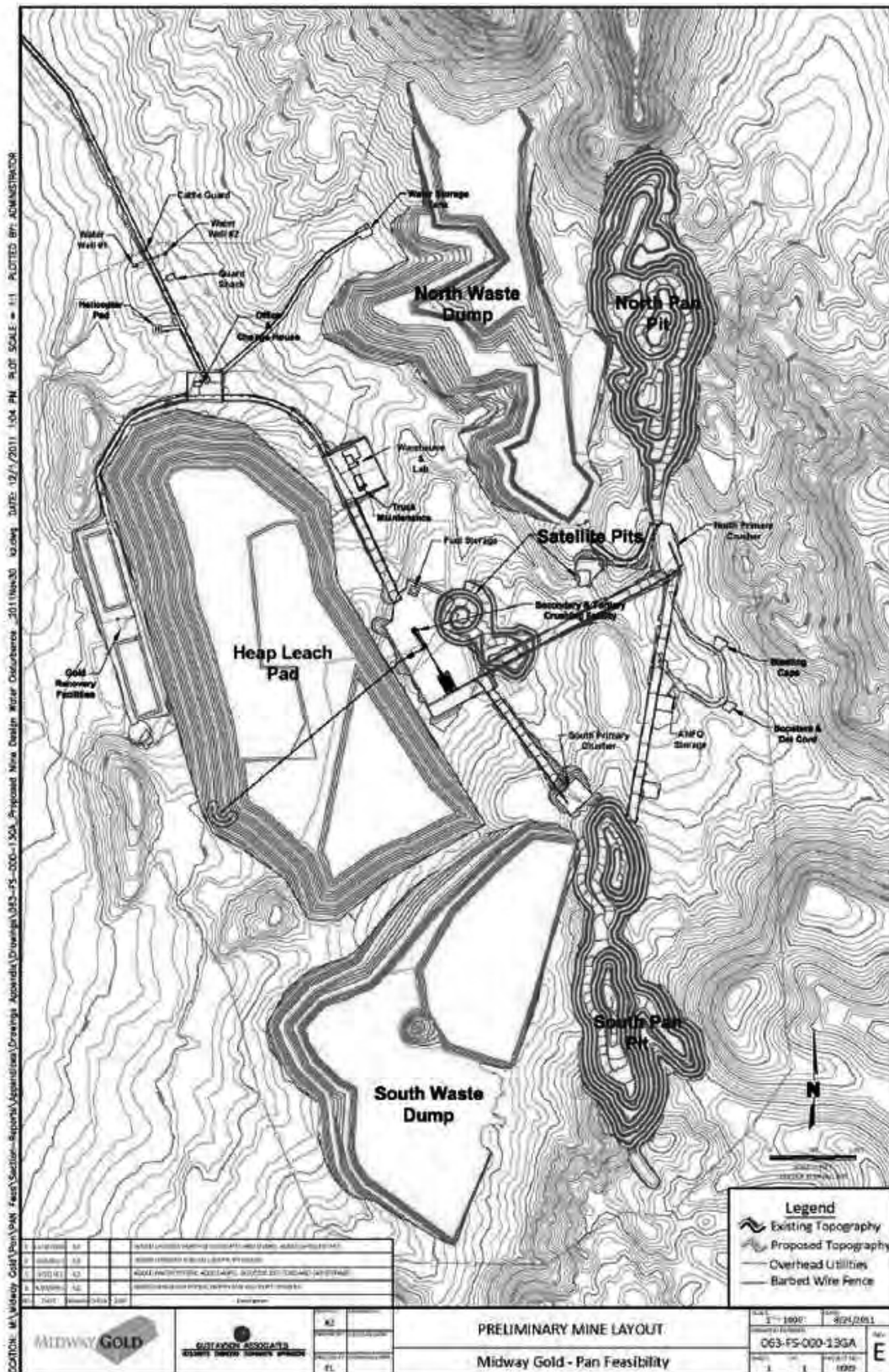
MIDWAY will own, operate, and maintain all equipment. The general site layout, including pits, waste dumps, the secondary crusher site, infrastructure, ponds, and heap leach pads, is shown on Figure 16-1.

December 19, 2011

93







**Figure 16-1 General Site Layout**





Ore production is planned at a nominal rate of 17,000 tons per day (tpd), equivalent to 6.2 million tons per annum with a 8.8 year mine life. Mining is planned on a 7 day per week schedule, with two 12 hour shifts per day. Peak ore and waste production is estimated at 67,000 tpd. The average life of mine stripping ratio is 1.79:1 waste-to-ore, using a 0.006 Au oz/ton cutoff for the South Pan pit and a 0.008 Au oz/ton cutoff on the North and Central pits. The change in cutoffs from one pit to the next are a result of the metallurgical recovery testing which showed the South pit has an expected average recovery of 85% and the North pit has an expected recovery of 65%. Other cutoff scenarios were evaluated using 0.004, 0.006 and 0.008 Au oz/ton, but the scenario presented here provides the best IRR and NPV at a 5% discount rate.

#### 161.1.1 Pit Design

Whittle-generated pit surfaces, which maximized revenue based on the estimated average of \$1,180 per ounce gold, were used in conjunction with the Pan block model to design the open pits with haul roads and catch benches for North Pan, Central Pan, and South Pan. Pit designs are based in part on geologic criteria provided in the April 2011 Prefeasibility Level Pit Slope Evaluation report produced by Golder Associates. Geologic solids created for each lithological unit were used as a guide during the pit design process. The limestone units were designed with a 50° inter-ramp wall angle assuming pre-split blasting in these units, all other lithological units were designed at a 45° inter-ramp wall angle. Haul roads are designed at a width of 90 ft, which provides a safe truck width (23 feet) to running surface width ratio of 3.9. Maximum grade of the haul roads is 10%, except for the lowermost three to five benches where the grade is increased to 12% and the ramp width is narrowed to 50 feet to minimize excessive waste stripping. The pit design criteria are presented in Table 16-1.

**Table 16-1 Pit Design Criteria**

<b>Mine Design Criteria</b>		
<b>Pit Design Criteria</b>	<b>Limestone Units</b>	<b>All Other Rock Units</b>
Inter-Ramp Angles	50 Degrees	45 Degrees
Face Angles	70 Degrees	63 Degrees
Catch Bench Berm	30 ft.	30 ft.
Catch Bench Vertical Spacing	60 ft.	60 ft.
Minimum Turning Radius	90 ft.	90 ft.
Road Widths	90 ft.	90 ft.
Road Grade	10%	10%
Road Widths Pit Bottom	50 ft.	50 ft.
Road Grade Pit Bottom	12%	12%

Design of the North Pan pit has not changed considerably from the design considered during the Prefeasibility Study, but the size of the final South Pan pit has approximately doubled. The increase in size of the South Pan pit is based on the positive results of recent drilling in the Wendy target area. The Central Pan pits, which were not considered during the Prefeasibility Study, are located very close to the leach pad and will also provide suitable over-liner material for pad construction. The Central Pan pits will be mined first and then backfilled with waste from the South Pan pit. Design of the South Pan pit includes two phases of construction in order to account for a strip ratio that is considerably higher than the other pit designs. An intermediate pit was also designed near the south end of the North Pan pit to provide a borrow source for over-liner material. The final pit designs are shown in Figure 16-2

Study, are located very close to the leach pad and will also provide suitable over-liner material for pad construction. The Central Pan pits will be mined first and then backfilled with waste from the South Pan pit. Design of the South Pan pit includes two phases of construction in order to account for a strip ratio that is considerably higher than the other pit designs. An intermediate pit was also designed near the south end of the North Pan pit to provide a borrow source for over-liner material. The final pit designs are shown in Figure 16-2

December 19, 2011

96



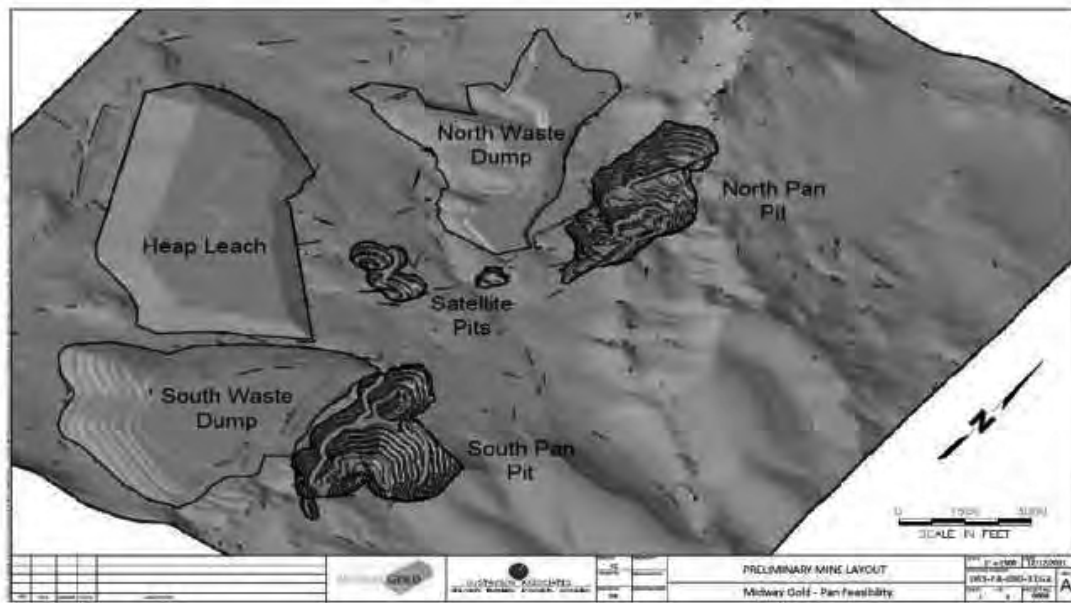


Figure 14.3: Final Pit, Heap and Waste Dumps

December 19, 2011

97

## 17 RECOVERY METHODS

### 17.1.1 Process Description

Material from the North, Central, and South Pan pits will be processed using conventional heap leaching methods. Ore will be mined and processed first from the Central pit, then the South pit (phase I), from the North pit, and finally from the South pit (phase II).

Ore will be crushed by the primary edge-of-pit mobile jaw crusher and secondary and tertiary cone crushers prior to leaching. Screening at secondary and tertiary crushing stations will control the crush size. The crushed ore will be agglomerated and conveyed to the heap leach pad. Crush size, leach kinetics, and recoveries are based on current metallurgical testing.

### 17.1.2 Production Rate and Products

The Pan mine and material handling system is designed for a throughput of 17,000 tons of ore per day, or 6.2 million tons of ore per year. The ADR plant is designed at 5,000 gpm, and is expected to produce approximately 80,000 ounces of gold per year. The entire mine and process flow is depicted in Figure 17-1.

December 19, 2011

122



Typical for most Carlin type ores, the reagent consumption is relatively low (Table 17-1). Based on the metallurgical test work, RDI recommended using 0.4 to 0.6 lbs sodium cyanide per ton. 0.50 lbs per ton sodium cyanide consumption at a P80 ½-inch crush size has been used in the economic model.

**Table 17-1 Estimated Reagent Consumption**

LIME	1.8 Pounds per ton
CEMENT	5 pounds per ton
CYANIDE 1 ½" Crush	0.27 pounds per ton
CYANIDE ½" Crush	0.50 pounds per ton

Tests were completed on both the South and North Pan materials to support these estimates.

Agglomeration equipment includes:

- Cement Storage Silo package
- Lime Storage Silo package
- Agglomerator Unit

#### 1.7.1.6 Conveying and Stacking

Agglomerated ore is delivered to the short overland conveyor, which feeds a series of grasshopper conveyors and ultimately the telestacker conveyor (Figure 17-5). The telestacker conveyor distributes the crushed and agglomerated ore evenly across the leach pad, in 30 foot lifts.

- Agglomerator Discharge Conveyor 400-CV1
- Flat Grade Jump Conveyor 400-JC1-29
- Feed Conveyor 400-CV3
- IC Conveyor 400-CV4
- Telestacker Conveyor

## 21 CAPITAL AND OPERATING COSTS

### 21.1 Capital Cost Estimate

The capital cost estimate for the Pan Project includes all quoted equipment costs, quoted installation costs, and quantity takeoffs for major components. A breakdown of the total estimated initial capital cost is presented in Table 21-1.

**Table 21-1 Pan Project Capital Cost Estimate**

<b>Feasibility Capital Costs</b>	<b>Estimated Cost</b>
Mine Mobile Equipment	\$ 25,614,600
Mine Development	\$ 2,000,000
Mine Buildings	\$ 1,903,800
Primary Crushing - Edge of Pit to Stockpile	\$ 5,604,700
Ore Circuit - From Stockpile to Leach Pad	\$ 10,762,800
Gold Recovery Plant	\$ 7,290,500
Plant Mobile Equipment	\$ 281,600
Leach Pad Installation	\$ 6,737,000
Process Ponds	\$ 3,623,000
Storm Water Diversion	\$ 1,497,200
Infrastructure	\$ 13,603,500
Owner's Costs	\$ 4,768,800
Reclamation Bond, Facilities	\$ 500,000
<b>Subtotal</b>	<b>\$ 84,187,500</b>
Contingency	\$ 6,765,800
Working Capital	\$ 8,214,400
<b>Total Initial Capital</b>	<b>\$ 99,167,700</b>

#### 21.1.1 Basis

The capital cost estimates were generated primarily from quotes from equipment suppliers and contractors. Excluding contingency and working capital, 73% of the estimated costs are from quotes. In-house take-offs and estimated costs from previous construction projects were used for the remaining items. All individual costs include the appropriate sales tax component.

#### 21.1.2 Mine Development

Gustavson has included an allowance for pioneering, clearing, grubbing, and initial haul road construction in the capital cost estimate. The estimated quantities and costs associated with mine development tasks are presented in Table 21-2.

applied to the appropriate capital asset and income categories to calculate the regular income tax burden. Alternative minimum tax provisions were applied to those years in which the regular tax was below the minimum allowable level.

Projected economic outcomes were prepared on an annual basis, including the internal rate of return and utilizing a 5% discount factor for net present value calculations. An analysis of the years required for payback of initial capital and the payback multiple (the positive cash flows as a multiple of the total capital investment) were also generated.

## 22.5 Economic Projection

The project is projected to have a total lifespan of 9.75 years: one year of construction and pre-production, 8.25 years of full operations and one-half year of residual gold production. Approximately 864,000 ounces of gold are projected to be mined and 649,000 ounces of gold recovered and produced for sale. An initial capital investment of \$99.168 million, including contingency and working capital, is expected to be required with a total of \$154.904 million over the life-of-mine, including reclamation, contingency and all sustaining capital. Following the Gold Institute (GI) guidelines, cash operating cost is projected to be \$537 per ounce of gold. The GI total cash cost (including royalties) would be \$585 per ounce and the GI total production cost is expected to be \$824 per ounce. The economic projection for the Pan Project is presented in Table 22-1.

**Table 22-1 Economic Projection**

Gold Price	Net Present Value @ 5%	Internal Rate of Return	Payback Period	Payback Multiple
\$855	\$4,100,000	6.0%	7.22	1.30
\$1,200	\$122,600,000	32.4%	2.59	2.88
\$1,550	\$235,100,000	55.7%	1.70	4.53
\$1,900	\$344,400,000	79.1%	1.20	6.30

## 22.6 Sensitivity Analysis

### 22.6.1 Price

Consistent with almost all gold projects, the Pan Project is very responsive to changes in the price of gold. For this study, an increase in the average gold price to \$1550 per ounce increases the NPV-5 by 92% to approximately \$235 million. An increase to \$1900/oz in the gold price results in an NPV-5 of \$344 million, an increase of 181% (Figure 22-1).

## EXHIBIT 2



8-K 1 midway8k\_11262012.htm

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

**Date of Report: November 21, 2012**  
(Date of earliest event reported)

**MIDWAY GOLD CORP.**  
(Exact Name of Registrant as Specified in Charter)

**British Columbia, Canada**  
(State or Other Jurisdiction of Incorporation)

**001-33894**  
(Commission File Number)

**98-0459178**  
(IRS Employer Identification No.)

**8310 South Valley Highway, Suite 280**  
**Englewood, Colorado**  
(Address of principal executive offices)

**80112**  
(Zip Code)

Registrant's telephone number, including area code: **(720) 979-0900**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

### **Item 1.01 Entry into Material Definitive Agreements**

On November 21, 2012, Midway Gold Corp. (the “**Registrant**” or “**Midway**”) announced a US\$70,000,000 private placement of Series A Preferred Shares (the “**Series A Preferred Shares**”) to institutional accredited investors, including INV-MID, LLC (as “**Lead Investor**”), EREF-MID II, LLC, and HCP-MID, LLC (collectively, with the Lead Investor, the “**Investors**”). The Private Placement is expected to close on or before December 13, 2012.

In connection with the private placement, Midway entered into Share Purchase Agreements, a Registration Rights Agreement and a Side Letter with the Investors, each effective November 21, 2012, and agreed to the terms of the Series A Preferred Amendment to Midway’s Articles of Incorporation. Hale Capital Partners, L.P. participated as part of the Investors in the private placement. Nathaniel Klein, a current director, is Vice President of Hale Capital Partners, L.P. and abstained from approving the private placement and the transactions contemplated thereunder.

#### **Share Purchase Agreement**

Under the terms of the Share Purchase Agreements, Midway agreed to sell and the Investors agreed to purchase 37,837,838 Series A Preferred Shares at a price of US\$1.85 per Series A Preferred Share, for aggregate purchase consideration of US\$70,000,000. The proceeds will be used for working capital and general corporate purposes.

The Share Purchase Agreements contain customary representations and warranties, including Midway representations related to availability of securities law exemptions, due authorization, financial statements, capitalization, property (title, permits, environmental), employee, insurance, tax compliance and regulatory matters and Investor representations related to accredited investor status, authorization and securities law matters. The Share Purchase Agreements contain customary closing conditions, including closing opinion delivery, execution of a Registration Rights Agreement, filing of amendments to Midway’s Articles of Incorporation to authorize the issuance of Series A Preferred Shares, no material changes, no litigation, delivery of consents and certificates and other customary closing conditions, indemnification undertakings, Investors’ expense reimbursement and other obligations. The Share Purchase Agreements are governed by New York law.

Neither the Series A Preferred Shares nor the Common Shares issuable upon conversion or paid as dividends have been registered under the Securities Act of 1933, as amended (the “**U.S. Securities Act**”), or any state securities laws. The Series A Preferred Shares will be issued only to institutional “accredited investors: (as defined in Rule 501(a) of Regulation D) pursuant to exemptions from such registration requirements and will be deemed “restricted securities” as defined in Rule 144(a)(3) of the U.S. Securities Act.

No underwriting discounts, fees or commissions are payable in connection with the private placement.

The Private Placement is expected to close on or before December 13, 2012.

#### **Series A Rights**

In connection with the private placement, Midway will amend its Articles of Incorporation to authorize Series A Preferred Shares in the capital of Midway with certain terms, conditions, and rights (the “**Series A Rights**”). Material provisions of the Series A Rights are as follows:

**Voting:** Series A Preferred Shares will have the following voting rights:

**Voting at Shareholder Meetings:** Series A Preferred Shares will be entitled to vote, on an as converted basis, at all meetings of Midway’s shareholders, except as otherwise required by law or in the amended Articles of Incorporation.

- (a) **Approval of Certain Corporate Actions:** The consent or affirmative vote of the Preferred Super Majority (initially the Lead Investor until the Lead Investor owns less than 3,783,784 Series A Preferred Shares, then the holders of a majority of the Series A Preferred Shares) is required for Midway to effect any of the following:

- (b) create a new class or series of shares equal or superior to the shares of such class;
- (c) redeem or repurchase any shares of the Company except for purchases at cost upon termination of employment;
- (d) a voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the Company;
- (e) change the special rights or restrictions attached to the Series A Preferred Shares;
- (f) amend or repeal of any provision of the Company's Notice of Articles or Articles in a manner adverse to the holders of Series A Preferred Shares; or
- (g) issue any additional Common Shares or common share equivalents for less than the Conversion Price (initially US\$1.85) applicable to the Series A Preferred Shares; except for any of the following:
  - (i) Common Shares pursuant to a Stock Split;
  - (ii) securities issued upon exercise, conversion or exchange of existing and outstanding Securities Equivalents on the date hereof;
  - (iii) options to acquire Common Shares (and Common Shares issuable upon exercise of such options) issued in accordance with any employee incentive stock option plan, or any amendment to a stock option plan, of the Company approved by the shareholders of the Company for the Company's management, directors and employees where the exercise price or conversion price of such Options is below the Conversion Price, but is not less than the Closing Price of the Common Shares at the time of such grant or issuance; provided, further, that the aggregate of such grants, issuances or sales per calendar year shall not exceed five percent (5%) of the issued and outstanding shares of Common Shares as of December 31 of such calendar year;
  - (iv) Common Shares issued for the purpose of redeeming in full the Series A Preferred Shares in cash; or
  - (v) up to a maximum of 756,757 Common Shares to be used exclusively for real property acquisitions, including by way of a joint venture.

**Director Appointment:** Upon approval of a majority of the holders of Common Shares of Midway who cast votes at a meeting of Common Shareholders, the Preferred Governance Majority (initially the Lead Investor until the Lead Investor owns less than 7,567,568 Series A Preferred Shares, then the holders of a majority of the Series A Preferred Shares) has the right to nominate one (1) director nominee for election to the Board to be elected by the Preferred Holders (the “**Preferred Director**”), voting as a separate series at each annual or special meeting of shareholders of the Company or action by written consent of shareholders at which directors will be elected. If Midway’s board of directors is increased beyond seven (7) members, increases shall occur in increments of two (2) and the Preferred Governance Majority will have the right to designate one (1) additional director nominee for election or appointment as director. The Preferred Governance Majority has the right to fill any vacancy of the Preferred Director position. The director appointment rights terminates if there are less than 7,567,568 Series A Preferred Shares issued and outstanding. These rights are subject to approval of the holders of a majority of the Common Shares.

**Dividend Rights:** Series A Preferred Shares will be entitled to an annual 8% dividend, compounded monthly and payable quarterly in cash or, at the option of Midway and subject to certain conditions, in common shares. Dividends are payable beginning on April 1, 2013, and thereafter be paid on the first business day of each following quarter, beginning July 2, 2013. Midway may elect to pay dividends in Common Shares based on the closing price on NYSE MKT the day before the dividend is paid; provided that the issuance is an exempt purchase pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended. No dividend or other distribution greater than the Series A Preferred Dividend will be paid, declared or set apart for payment in respect of any Common Shares or shares of any other class ranking junior to the Series A Preferred Shares in

respect of dividends (and the Series A Preferred Shares are deemed to rank senior to each class of shares that is created before it).

**Liquidation Preference:** Series A Preferred Shares shall have a liquidation preference equal to 125% of the initial issue price of the Series A Preferred Shares (initially US\$1.85) plus any accrued dividends in connection with certain liquidation events, including:

- (a) a voluntary or involuntary liquidation, dissolution or winding-up of the Registrant's affairs;
- (b) any merger, amalgamation, reorganization, arrangement, acquisition or other similar transaction of Midway with another person or entity, pursuant to which the holders of voting securities of Midway immediately prior to the transaction hold (assuming an immediate and maximum exercise/conversion of all derivative securities issued in the transaction), immediately after such transaction, directly or indirectly, less than 50% of the voting power to elect directors of Midway resulting from the transaction (unless not deemed a liquidation event as provided in the Series A Rights);
- (c) a sale, lease, conveyance or other disposition of all or substantially all of the property or business of the Registrant (directly or through a subsidiary) or the sale of substantially all of the properties, title, or rights related to the properties owned by Midway's U.S. subsidiary or U.S. affiliate in White Pine County, Nevada (unless not deemed a liquidation event as provided in the Series A Rights); or
- (d) the Common Shares are no longer listed or traded on any of the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, Inc., the NYSE MKT LLC, the NASDAQ Global Select Market, the NASDAQ Capital Market or the OTC Bulletin Board.

**Conversion Rights:** Series A Preferred Share have the following conversion terms:

Conversion: Each Series A Preferred Share is convertible into one Midway Common Share, subject to adjustment for stock splits and recapitalizations, at any time by the holder of Series A Preferred Shares.

Mandatory Conversion: Midway has the option to the right to force the conversion of the Series A Preferred Shares after 1 year, subject to certain conditions, including, but not limited to: (a) the Common Shares trade on the NYSE MKT or other eligible market above \$3.70, as adjusted for stock splits and recapitalizations, for 20 consecutive trading days; (b) the Common Shares are registered for resale under the U.S. Securities Act or can be resold under Rule 144 without volume limitations; (c) no public announcement has been made of a pending or proposed liquidation event; (d) holders are not in possession of non-public material information; (e) no black-out period restricting the sale of Common Shares; (f) the issuance is an exempt purchase pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended; and (g) the number of Series A Preferred Shares subject to the mandatory conversion will be calculated as of the date of the conversion based on the product of (i) the aggregate number of common shares issuable by Midway to all holders of Series A Preferred Shares upon such conversion multiplied by (ii) the average of the dollar volume-weighted average price for such common shares on NYSE MKT during the period beginning at 9:30:01 a.m., New York time and ending at 4:00:00 p.m., New York time, as reported by Bloomberg through its "Volume at Price" function for each of the twenty (20) consecutive trading days immediately prior to the conversion shall not exceed 30% of the average of the aggregate dollar trading volume of common stock traded on the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, Inc., the NYSE MKT LLC, the NASDAQ Global Select Market, the NASDAQ Capital Market and the OTC Bulletin Board for the five (5) consecutive trading days for each of the twenty (20) consecutive trading days immediately preceding the applicable conversion.

**Mandatory Redemption:** Five (5) years after the date of issuance the Series A Preferred Shares are redeemable by either Midway or the holders of Series A Preferred Shares for cash at US\$1.85 per share, as adjusted for stock splits and recapitalizations. The redemption payment is payable in legal available funds within 30 days after a redemption notice. If Midway is prohibited from redeeming Series A Preferred Shares, then the Registrant shall distribute all of the legally available funds to the holders of the Series A Preferred Shares and repay any amounts otherwise due in equal quarterly payments for a period of two (2) years from the date that is five (5) years after the date of issuance of the Series A Preferred Shares.

If the redemption is not completed during the two year period, the Preferred Super Majority may (i) voting as a single class (to the exclusion of the holders of all other securities and classes of capital stock of the Company), vote to elect such number of additional directors which shall constitute a majority of Midway's Board of Directors, and the number of directors constituting the Company's Board of Directors shall automatically be increased as necessary, and (ii) in the event it is not permitted, the Preferred Super Majority may sell, as may be permitted by applicable law, on behalf of the Company the assets of the Company, in its discretion, that are sufficient to redeem the remaining Series A Preferred Shares. The director appointment rights are subject to approval of the holders of a majority of the Common Shares.

### Registration Rights Agreement

In connection with the Private Placement, Midway entered into a Registration Rights Agreement with the Investors, under which Midway will register the Common Shares issued or issuable upon conversion of the Series A Preferred Shares and upon payment of a dividend in kind. Under the Registration Rights Agreement, Midway has agreed, within 90 days after closing, to use all commercially reasonable efforts to prepare and file with the SEC a registration statement on Form S-3 (or such other form as available if Form S-3 is not available) and a Canadian prospectus covering the resale of all of the common shares common shares issued or issuable upon conversion of the Series A Preferred Shares. Midway will maintain the effectiveness of the registration statement until all Common Shares have been sold or may be sold without registration under Rule 144 of the U.S. Securities Act without any limitation as to volume or manner of sale requirements. The Registration Rights Agreement contains customary terms and conditions and does not provide for any specific cash settlement or liquidated damage payments.

### Side Letter

In connection with the Private Placement, Midway entered into a side letter with the Investors providing for certain board nomination and committee appointment rights, including the following:

Nomination Right: The Lead Investor has the right to the right to nominate one (1) director nominee for election to the Midway's board of directors to stand for election at each annual or special meeting of shareholders of the Registrant or action by written consent of shareholders at which directors will be elected. Nathaniel Klein, a current director and Vice President of Hale Capital Partners, L.P., shall be nominated as the initial director to stand for election to Midway's board of directors at the next annual shareholders meeting.

Nomination and Election Right: The side letter also provides for Series A Preferred Share director nomination and election rights consistent with the Series A Rights. These rights are subject to approval of the holders of Common Shares.

Director Vacancy and Observation Right: At closing of the Private Placement, Nathaniel Klein will resign as a director and Martin Hale will be appointed as a director by the board in his place. Nathaniel Klein shall maintain observation rights to the board until his election to the board at the next annual general meeting of the Registrant.

Common Share Approval: Midway has agreed to seek Common Shareholder approval of the Series A Preferred Share director nomination and appointment rights at the next annual or special meeting of the shareholders and at each meeting thereafter until such approval is obtained.

Committee Appointments: Midway has agreed to appoint Martin Hale, President of Hale Capital Partners, L.P., or his nominee to Midway's nominating committee and compensation committee of the Board of Directors. In addition, Midway has agreed to form a budget and work program committee, consisting of three non-executive directors, one of whom will be either Martin Hale or upon his election to the board the Preferred Director, and the Chief Executive Officer (CEO), whose mandate shall be to review and approve the annual business and financing plans and capital and operating budgets (and any modifications of, or deviations from such plans or budgets). Any and all approvals of the committee relating to such plans and budgets must be unanimous; provided that Martin Hale or the Preferred Holder Director, as the case may be, and the CEO of the Company shall cooperate and work together in good faith to resolve any issues that the committee has identified as an impediment to their unanimous approval.

The foregoing summary of certain aspects of the Private Placement is qualified in its entirety by reference to the Share Purchase Agreement, Registration Rights Agreement, Side Letter, and Series A Rights, copies of which are filed as, respectively, Exhibits 10.1, 10.2, 10.3 and 3.1 to this Current Report on Form 8-K and which are hereby incorporated by reference into this Item 1.01.

### **Item 3.02 Unregistered Sales of Equity Securities**

The offer and sale of the Series A Preferred Shares is anticipated to be exempt from registration under Section 4(a)(2) and Regulation D Rule 506 of the U.S. Securities Act. The Private Placement will be conducted with limitations on resale and no general solicitation, and each purchaser of the Series A Preferred Shares will be an “Accredited Investor” as defined under Rule 501(a) of Regulation D.

### **Item 9.01. Exhibits**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
3.1	Form of Series A Preferred Rights (Amendment)
10.1	Share Purchase Agreement
10.2	Registration Rights Agreement
10.3	Side Letter

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**MIDWAY GOLD CORP.**

DATE: November 26, 2012

By: /s/ Kenneth A. Brunk  
Kenneth A. Brunk  
Chairman, President and CEO

**EXHIBIT INDEX**

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## EXHIBIT 3



## Midway Gold Announces US\$70 Million Strategic Financing

November 21, 2012

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (TSX VENTURE:MDW) (NYSE MKT:MDW) is pleased to announce that it has arranged a US\$70 million private placement financing of five year 8% convertible Series A Preferred shares at a price of US\$1.85 per share ("Preferred Shares").\

Kenneth A. Brunk, Midway's Chairman, President and CEO said, "Midway is pleased to welcome lead investor Hale Capital Partners, L.P. as a key strategic financial partner in the pursuit of the Company's goal of becoming a Nevada gold producer in the near term. This is a very important step forward for Midway as we have dramatically reduced financing risk in uncertain times, and have done so without incurring hedging on our future gold production or committing to any security over our assets, all while seeking to minimize equity dilution to our shareholders."

Martin Hale, CEO and Portfolio Manager of Hale Capital Partners, L.P., said, "We have been investors in Midway since 2010 and that history, the quality of the team and properties, and management execution have given us great confidence in supporting the Company."

The conversion price of the Preferred Shares represents a significant premium of 37% to the closing price of the Company's shares on November 20<sup>th</sup>, 2012.

The primary use of proceeds from the private placement will be to advance the Pan heap leach gold project towards production, including the ordering of long-lead time capital equipment, as well as engineering studies to advance the Gold Rock project.

The Private Placement is subject to customary closing conditions and deliverables. Midway anticipates executing final documentation and closing the private placement on or before December 13<sup>th</sup>, 2012.

### Key Terms of the Preferred Shares:

- US\$70 million Offering at a price of US\$1.85 per Preferred Share.
- Each Preferred Share is convertible into Common Shares of the Company on a 1 to 1 basis.
- Holders of the Preferred Shares are entitled to receive an annual, cumulative preferred 8% dividend payable quarterly in cash or common shares, at the Company's option.
- Preferred Shares are redeemable by either the Company or the holders after five years from the date of issuance for cash equal to the conversion price, initially US\$1.85.
- After a period of one year, subject to certain price and volume conditions, the Company may force the conversion of the Preferred Shares to common shares on a 1 to 1 basis.
- Preferred Shares have a liquidation preference equal to 125% of the issue price of the Preferred Shares in connection with certain liquidation events.
- Except as otherwise required by law, the holders of Preferred Shares will be entitled to vote their shares, on an as converted basis, at meetings of the shareholders of the Company.

- Upon common shareholder approval at the next annual general meeting of the Company, the holders of Preferred Shares shall be entitled to nominate and elect a Director of the Company.
- The issuance of common shares below a price of US\$1.85 or repurchase any common shares, requires the consent of a designated Preferred Shareholder.
- No fees or commissions are payable in connection with this placement.
- The investors have been granted registration rights under a Registration Rights Agreement and other rights related to board and committee appointments under a side letter.

Neither the Preferred Shares nor the Common Shares issuable upon exercise of the Preferred Shares or in lieu of cash dividend payments have been registered under the United States Securities Act of 1933, as amended, or the securities laws of any state. The securities may be offered or sold only under exemptions from these registration requirements. This press release does not constitute an offer of securities.

## ON BEHALF OF THE BOARD

"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

## About Midway Gold Corp.

Midway Gold Corp. is a precious metals company with a vision to explore, design, build and operate gold mines in a manner accountable to all stakeholders while assuring return on shareholder investments. For more information about Midway, please visit our website at [www.midwaygold.com](http://www.midwaygold.com) or contact R.J. Smith, Vice President of Administration, at (877) 475-3642 (toll-free).

*Neither the TSX Venture Exchange, its Regulation Services Provider (as that term is defined in the policies of the TSX Venture Exchange) nor the NYSE MKT accepts responsibility for the adequacy or accuracy of this release.*

*This press release contains forward-looking statements within the meaning of Canadian and United States securities laws about the Company and its business which may include, but is not limited to, the intended terms of the private placement, closing of the private placement and use of proceeds. Such forward-looking statements and forward-looking information reflect our current views with respect to future use of proceeds and are subject to certain risks, uncertainties and assumptions, including but not limited to risks related to delays in closing, the receipt of regulatory approvals and changes in market conditions. Forward looking statements are statements that are not historical facts and include, but are not limited to, statements about the Company's intended work plans and resource estimates and potential offering of common shares of the Company from time to time. The forward-looking statements in this press release are subject to various risks, uncertainties and other factors that could cause the Company's actual results or achievements to differ materially from those expressed in or implied by forward looking statements. These risks, uncertainties and other factors include, without limitation, risks related to the timing and completion of the Company's intended work plans, risks related to fluctuations in gold prices; uncertainties related to raising sufficient financing to fund the planned work in a timely manner and on acceptable terms; changes in planned work resulting from weather, logistical, technical or other factors; the possibility that results of work will not fulfill expectations and realize the perceived potential of the Company's properties; uncertainties involved in the interpretation of drilling results and other tests and the estimation of gold resources and reserves; the possibility that required permits may not be obtained on a timely manner or at all; the possibility that capital and operating costs may be higher than currently estimated and may preclude commercial development or render operations uneconomic; the possibility that the estimated recovery rates may not be achieved; risk of accidents, equipment breakdowns and labor disputes or other unanticipated difficulties or interruptions; the possibility of cost overruns or unanticipated expenses in the work program; and other factors identified in the Company's SEC filings and its filings with Canadian securities regulatory authorities. Forward-looking statements are based on the beliefs, opinions and expectations of the Company's management at the time they are made, and other than as required by applicable securities laws, the Company does not assume any obligation to update its forward-looking statements if those beliefs, opinions or expectations, or other circumstances, should change.*

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**MIDWAY GOLD CORP.**

DATE: November 26, 2012

By: /s/ Kenneth A. Brunk  
Kenneth A. Brunk  
Chairman, President and CEO

**EXHIBIT INDEX**

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Kenneth A. Brunk, Midway's Chairman, President and CEO said, "Midway is pleased to welcome lead investor Hale Capital Partners, L.P. as a key strategic financial partner in the pursuit of the Company's goal of becoming a Nevada gold producer in the near term. This is a very important step forward for Midway as we have dramatically reduced financing risk in uncertain times, and have done so without incurring hedging on our future gold production or committing to any security over our assets, all while seeking to minimize equity dilution to our shareholders."

Martin Hale, CEO and Portfolio Manager of Hale Capital Partners, L.P., said, "We have been investors in Midway since 2010 and that history, the quality of the team and properties, and management execution have given us great confidence in supporting the Company."

The conversion price of the Preferred Shares represents a significant premium of 37% to the closing price of the Company's shares on November 20<sup>th</sup>, 2012.

The primary use of proceeds from the private placement will be to advance the Pan heap leach gold project towards production, including the ordering of long-lead time capital equipment, as well as engineering studies to advance the Gold Rock project.

The Private Placement is subject to customary closing conditions and deliverables. Midway anticipates executing final documentation and closing the private placement on or before December 13<sup>th</sup>, 2012.

### Key Terms of the Preferred Shares:

- US\$70 million Offering at a price of US\$1.85 per Preferred Share.
- Each Preferred Share is convertible into Common Shares of the Company on a 1 to 1 basis.
- Holders of the Preferred Shares are entitled to receive an annual, cumulative preferred 8% dividend payable quarterly in cash or common shares, at the Company's option.
- Preferred Shares are redeemable by either the Company or the holders after five years from the date of issuance for cash equal to the conversion price, initially US\$1.85.
- After a period of one year, subject to certain price and volume conditions, the Company may force the conversion of the Preferred Shares to common shares on a 1 to 1 basis.
- Preferred Shares have a liquidation preference equal to 125% of the issue price of the Preferred Shares in connection with certain liquidation events.
- Except as otherwise required by law, the holders of Preferred Shares will be entitled to vote their shares, on an as converted basis, at meetings of the shareholders of the Company.

- Upon common shareholder approval at the next annual general meeting of the Company, the holders of Preferred Shares shall be entitled to nominate and elect a Director of the Company.
- The issuance of common shares below a price of US\$1.85 or repurchase any common shares, requires the consent of a designated Preferred Shareholder.
- No fees or commissions are payable in connection with this placement.
- The investors have been granted registration rights under a Registration Rights Agreement and other rights related to board and committee appointments under a side letter.

Neither the Preferred Shares nor the Common Shares issuable upon exercise of the Preferred Shares or in lieu of cash dividend payments have been registered under the United States Securities Act of 1933, as amended, or the securities laws of any state. The securities may be offered or sold only under exemptions from these registration requirements. This press release does not constitute an offer of securities.

## ON BEHALF OF THE BOARD

"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

## About Midway Gold Corp.

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## EXHIBIT 4

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

**Date of Report: December 13, 2012**  
(Date of earliest event reported)

**MIDWAY GOLD CORP.**  
(Exact Name of Registrant as Specified in Charter)

**British Columbia, Canada**  
(State or Other Jurisdiction of Incorporation)

**001-33894**  
(Commission File Number)

**98-0459178**  
(IRS Employer Identification No.)

**8310 South Valley Highway, Suite 280**  
**Englewood, Colorado**  
(Address of principal executive offices)

**80112**  
(Zip Code)

Registrant's telephone number, including area code: **(720) 979-0900**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

**Item 1.01 Entry into Material Definitive Agreements**

On December 13, 2012, Midway Gold Corp. (“*Midway*”) closed the private placement of Series A Preferred Shares pursuant to the terms of the Share Purchase Agreements, Registration Rights Agreement and Side Letter, each dated November 21, 2012. The material terms of the agreements are described in Item 1.01 of Midway’s Form 8-K filed on November 26, 2012 and are incorporated herein by reference.

**Item 3.02 Unregistered Sales of Equity Securities**

On December 13, 2012, Midway closed a US\$70,000,000 private placement of Series A Preferred Shares (the “*Series A Preferred Shares*”) to institutional accredited investors, including INV-MID, LLC, EREF-MID II, LLC and HCP-MID, LLC (the “*Investors*”).

Midway offered and sold 37,837,838 Series A Preferred Shares at a price of US\$1.85 per share. The Series A Preferred Shares are convertible into common shares of Midway on a one-for-one share basis. An eight percent (8%) annual dividend, compounding monthly, payable quarterly, is payable on the Series A Preferred Shares, the first payment commencing on April 1, 2013 and each dividend payment payable thereafter on the first business day of each quarter commencing on July 2, 2013. The quarterly dividend is payable in cash or in-kind in common shares of Midway at the option of Midway, subject to certain conditions. The Series A Preferred Shares and common shares issuable upon conversion or for in-kind dividend payments are or will be “restricted securities” as defined in Rule 144(a)(3) of the U.S. Securities Act of 1933, as amended (the “*U.S. Securities Act*”).

Neither the Series A Preferred Shares nor the common shares issuable upon conversion of or payable as dividends on the Series A Preferred Shares have been registered under the U.S. Securities Act or any state securities laws. The offer and sale of the Series A Preferred Shares was exempt from registration under Section 4(a)(2) and Regulation D Rule 506 of the U.S. Securities Act. The private placement was conducted with limitations on resale and no general solicitation. The Series A Preferred Shares were offered and sold to institutional “accredited investors” (as defined in Rule 501(a) of Regulation D) pursuant to exemptions from such registration requirements.

In connection with the private placement, Midway entered into a Registration Rights Agreement with the Investors, under which Midway will register the Midway common shares issued or issuable upon conversion of the Series A Preferred Shares and upon payment of an in-kind dividend for resale under the U.S. Securities Act. Under the Registration Rights Agreement, Midway has agreed, within 90 days after closing, to use all commercially reasonable efforts to prepare and file with the SEC a registration statement on Form S-3 (or such other form as available if Form S-3 is not available) and a Canadian prospectus covering the resale of all of the common shares issued or issuable upon conversion of the Series A Preferred Shares. Midway will maintain the effectiveness of the registration statement until all such common shares have been sold or may be sold without registration under Rule 144 of the U.S. Securities Act without any limitation as to volume or manner of sale requirements. The Registration Rights Agreement contains customary terms and conditions and does not provide for any specific cash settlement or liquidated damage payments.

**Item 5.02 Departure/Election of Director**

In connection with the provisions of the Side Letter, Nathaniel Klein, a member of Midway’s Board of Directors (the “*Board*”) and Vice President of Hale Capital Partners, L.P., resigned from the Board effective December 13, 2012.

Midway appointed Martin Hale, President of Hale Capital Partners, L.P., as a director to fill the vacancy on the Board resulting from Nathaniel Klein’s resignation. Midway appointed Martin Hale to serve on the Corporate Governance and Nominating Committee, the Compensation Committee and the Budget/Work Plan Committee of Midway’s Board.

In connection with the private placement of the Series A Preferred Shares, Midway entered into a Side Letter which provides for the following:

**Nomination Right:** Upon approval of a majority of the holders of common shares of Midway, the Preferred Governance Majority (initially HCP-MID, LLC until the Investors own less than 7,567,568 Series A Preferred Shares, then the holders of a majority of the Series A Preferred Shares) has the right to nominate one (1) director nominee (the “***Preferred Holder Director***”) for election to Midway’s Board to stand for election at each annual or special meeting of shareholders or action by written consent of shareholders at which directors will be elected. Nathaniel Klein will be nominated as the initial the Preferred Holder Director to stand for election to Midway’s Board at the next annual shareholders meeting in 2013. Mr. Klein shall maintain observation rights to the Board until his election to the Board at the next annual general meeting of Midway.

**Budget/Work Plan Committee:** Midway formed a Budget/Work Plan Committee (the “***Budget Committee***”). The Budget Committee consists of three non-executive directors, one of whom is the Preferred Holder Director or appointed by the Preferred Governance Majority, and the Chief Executive Officer (“***CEO***”) of Midway. CEO Kenneth Brunk, Martin Hale, Roger Newell and John Sheridan were appointed to the Budget Committee. The mandate of the Budget Committee is to review and approve the annual business and financing plans and capital and operating budgets (and any modifications of, or deviations from, such plans or budgets). The Budget Committee chair is the CEO. A majority of the members of the Budget Committee shall constitute a quorum for the transaction of business, and the unanimous vote of all members shall be required for all acts and approvals of the Budget Committee. In the event that unanimous approval of the Budget Committee is not obtained for any matter with which the Budget Committee is authorized under its charter, the Preferred Holder Director and the CEO shall cooperate and work together in good faith to resolve any issues that the Budget Committee has identified as an impediment to their unanimous approval. Budget Committee members shall serve until the successors shall be duly designated and qualified. Except with respect to the Preferred Holder Director, any member may be removed at any time, with or without cause, by a majority of the Board then in office. Any vacancy in the Budget Committee occurring for any cause may be filled by a majority of the Board then in office; provided however, that any vacancy created by the death, resignation, removal or disqualification of any Preferred Holder Director shall be filled by an eligible person designated by the Preferred Super Majority (initially, HCP-MID, LLC until the Investors own less than 3,783,784 Series A Preferred Shares, then the holders of a majority of the Series A Preferred Shares) as the Preferred Holder Director standing member of the Budget Committee.

**Committee Appointments:** Martin Hale was appointed to Midway’s Corporate Governance and Nominating Committee, the Compensation Committee and the Budget Committee of Midway’s Board.

### **Item 5.03 Amendments to Articles of Incorporation**

Midway amended its Notice of Articles and Articles by filing a Notice of Alteration with the British Columbia Registry of Corporations on December 13, 2012.

The amended Articles authorize the Series A Preferred Shares in the capital of Midway with certain terms, conditions, and rights (the “***Series A Rights***”). (Terms not defined in this Item 5.03 have the meaning ascribed to them in the Series A Rights.) Material provisions of the Series A Rights are as follows:

**Voting:** Series A Preferred Shares will have the following voting rights:

**Voting at Shareholder Meetings:** Series A Preferred Shares will be entitled to vote, on an as converted basis, at all meetings of Midway’s shareholders, except as otherwise required by law.

- (a) **Approval of Certain Corporate Actions:** The consent or affirmative vote of the Preferred Super Majority (initially HCP-MID, LLC until the Investors own less than 3,783,784 Series A Preferred Shares, then the holders of a majority of the Series A Preferred Shares) is required for Midway to effect any of the following:
  - (i) create a new class or series of shares equal or superior to the shares of such class;

- (ii) redeem or repurchase any shares of Midway except for purchases at cost upon termination of employment;
- (iii) a voluntary or involuntary liquidation, dissolution or winding-up of the affairs of Midway;
- (iv) change the special rights or restrictions attached to the Series A Preferred Shares;
- (v) amend or repeal of any provision of Midway's Notice of Articles or Articles in a manner adverse to the holders of Series A Preferred Shares; or
- (vi) issue any additional Midway common shares or common share equivalents for less than the Conversion Price (initially US\$1.85) applicable to the Series A Preferred Shares; except for any of the following:
  - 1. common shares pursuant to a Stock Split;
  - 2. securities issued upon exercise, conversion or exchange of existing and outstanding securities equivalents on the date hereof;
  - 3. options to acquire common shares (and common shares issuable upon exercise of such options) issued in accordance with any employee incentive stock option plan, or any amendment to a stock option plan, of Midway approved by the shareholders of Midway for Midway's management, directors and employees where the exercise price or conversion price of such options is below the Conversion Price, but is not less than the closing price of the common shares at the time of such grant or issuance; provided, further, that the aggregate of such grants, issuances or sales per calendar year shall not exceed five percent (5%) of the issued and outstanding shares of common shares as of December 31 of such calendar year;
  - 4. common shares issued for the purpose of redeeming in full the Series A Preferred Shares in cash; or
  - 5. up to a maximum of 756,757 common shares to be used exclusively for real property acquisitions, including by way of a joint venture.

**Director Appointment:** Upon approval of a majority of the holders of common shares of Midway, the Preferred Governance Majority (initially HCP-MID, LLC until the Investors own less than 7,567,568 Series A Preferred Shares, then the holders of a majority of the Series A Preferred Shares) have the right to nominate the Preferred Holder Director, to be elected by holders of the Series A Preferred Shares voting as a separate series at each annual or special meeting of shareholders of Midway or action by written consent of shareholders at which directors will be elected. If Midway's Board is increased beyond seven (7) members, increases shall occur in increments of two (2) and the Preferred Governance Majority will have the right to designate one (1) director nominee for election or appointment as director. The Preferred Governance Majority has the right to fill any vacancy of the Preferred Holder Director position. The director appointment rights terminate if there are less than 7,567,568 Series A Preferred Shares issued and outstanding. These rights are subject to approval of the holders of a majority of the common shares of Midway.

**Dividend Rights:** Series A Preferred Shares will be entitled to an annual 8% dividend, compounded monthly and payable quarterly in cash or, at the option of Midway and subject to certain conditions, in Midway common shares. Dividends are payable beginning on April 1, 2013, and thereafter be paid on the first business day of each following quarter, beginning July 2, 2013. Midway may elect to pay dividends in Midway common shares based on the closing price on NYSE MKT the day before the dividend is paid; provided that the issuance is an exempt purchase pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended. No dividend or other distribution greater than the Series A Preferred Dividend will be paid, declared or set apart for payment in respect of any common shares or shares of any other class ranking junior to the Series A Preferred Shares in respect of dividends (and the Series A Preferred Shares are deemed to rank senior to each class of shares that is created before it).

**Liquidation Preference:** Series A Preferred Shares shall have a liquidation preference equal to 125% of the initial issue price of the Series A Preferred Shares in connection with certain liquidation events, including:

- (a) a voluntary or involuntary liquidation, dissolution or winding-up of Midway's affairs;
- (b) any merger, amalgamation, reorganization, arrangement, acquisition or other similar transaction of Midway with another person or entity, pursuant to which the holders of voting securities of Midway immediately prior to the transaction hold (assuming an immediate and maximum exercise/conversion of all derivative securities issued in the transaction), immediately after such transaction, directly or indirectly, less than 50% of the voting power to elect directors of Midway resulting from the transaction (unless not deemed a liquidation event as provided in the Series A Rights);
- (c) a sale, lease, conveyance or other disposition of all or substantially all of the property or business of Midway (directly or through a subsidiary) or the sale of substantially all of the properties, title, or rights related to the properties owned by Midway's U.S. subsidiary or U.S. affiliate in White Pine County, Nevada (unless not deemed a liquidation event as provided in the Series A Rights); or
- (d) Midway common shares are no longer listed or traded on any of the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, Inc., the NYSE MKT LLC, the NASDAQ Global Select Market, the NASDAQ Capital Market or the OTC Bulletin Board.

**Conversion Rights:** Series A Preferred Share have the following conversion terms:

Conversion: Each Series A Preferred Share is convertible into one Midway common share, subject to adjustment for stock splits and capital reorganizations, at any time by the holder of Series A Preferred Shares.

Mandatory Conversion: Midway has the right to force the conversion of the Series A Preferred Shares after 1 year, subject to certain conditions, including, but not limited to: (a) Midway common shares trade on the NYSE MKT or other eligible market above \$3.70, as adjusted for stock splits and recapitalizations, for 20 consecutive trading days; (b) Midway common shares are registered for resale under the U.S. Securities Act or can be resold under Rule 144 without volume limitations; (c) no public announcement has been made of a pending or proposed liquidation event; (d) holders are not in possession of non-public material information; (e) no black-out period restricting the sale of Midway common shares; (f) the issuance is an exempt purchase pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended; (g) issuance of the common shares would not violate the rules of the NYSE MKT; and (h) the number of Series A Preferred Shares subject to the mandatory conversion will be calculated as of the date of the conversion based on the product of (i) the aggregate number of common shares issuable by Midway to all holders of Series A Preferred Shares upon such conversion multiplied by (ii) the average of the dollar volume-weighted average price for such common shares on NYSE MKT during the period beginning at 9:30:01 a.m., New York time and ending at 4:00 p.m., New York time, as reported by Bloomberg through its "Volume at Price" function for each of the twenty (20) consecutive days immediately prior to the conversion shall not exceed 30% of the average of the aggregate dollar trading volume of common stock traded on the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, Inc., the NYSE MKT LLC, the NASDAQ Global Select Market, the NASDAQ Capital Market and the OTC Bulletin Board for the five (5) consecutive trading days for each of the twenty (20) consecutive trading days immediately preceding the applicable conversion.

**Mandatory Redemption:** Five (5) years after the date of issuance, Series A Preferred Shares are redeemable by either Midway or the holders of Series A Preferred Shares for cash at US\$1.85 per share, as adjusted for stock splits and recapitalizations. The redemption payment is payable in legal available funds within 30 days after a redemption notice. If Midway is prohibited from redeeming Series A Preferred Shares, then Midway shall distribute all of the legal available funds to the holders of the Series A Preferred Shares and repay any amounts otherwise due in equal quarterly payments for the period of two (2) years from date on which redemption is demanded.

If the redemption is not completed during the two year period, the Preferred Super Majority may (i) voting as a single class (to the exclusion of the holders of all other securities and classes of capital stock of Midway),

vote to elect such number of additional directors which shall constitute a majority of Midway's Board of Directors, and the number of directors constituting Midway's Board shall automatically be increased as necessary, and (ii) in the event it is not permitted, the Preferred Super Majority may sell, as may be permitted by applicable law, on behalf of Midway the assets of Midway, in its discretion, that are sufficient to redeem the

**Item 7.01 Regulation FD**

On December 13, 2012, Midway issued a press release announcing the closing of the private placement. A copy of the press release is attached to this Current Report on Form 8-K as Exhibit 99.1. In accordance with General Instruction B.2 of Form 8-K, the information set forth herein and in the press release is deemed to be "furnished" and shall not be deemed to be "filed" for purposes of the Securities Exchange Act of 1934, as amended. In accordance with General Instruction B.6 of Form 8-K, the information set forth in herein and in the press release shall not be deemed an admission as to the materiality of any information in this Current Report on Form 8-K that is required to be disclosed solely to satisfy the requirements of Regulation FD.

**Item 9.01. Exhibits**

- 10.1 Share Purchase Agreement\*
- 10.2 Registration Rights Agreement\*
- 10.3 Side Letter\*
- 3.1 Articles and Notice of Alteration for Series A Rights
- 99.1 Press Release

\* Previously filed on Form 8-K dated November 26, 2012, and incorporated by reference.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**MIDWAY GOLD CORP.**

DATE: December 13, 2012

By: /s/ Kenneth A. Brunk  
Kenneth A. Brunk  
Chairman, President and CEO

**EXHIBIT INDEX**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
10.1	Share Purchase Agreement*
10.2	Registration Rights Agreement*
10.3	Side Letter*
3.1	Articles and Notice of Alteration for Series A Rights
99.1	Press Release

\* Previously filed on Form 8-K dated November 26, 2012, and incorporated by reference.

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## Midway Gold Closes US\$70 Million Strategic Financing

December 13, 2012

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (TSX VENTURE: MDW) (NYSE MKT:MDW) is pleased to announce that it has closed its previously announced US\$70 million private placement financing (the "Transaction") of five year 8% convertible Series A Preferred shares at a price of US\$1.85 per share ("Preferred Shares"). Kenneth A. Brunk, Midway's Chairman, President and CEO commented, "Midway is pleased to have reached this significant funding milestone, which allows the Company to focus on finalizing our construction plans for the Pan project and to continue development of the Gold Rock project."

Concurrent with closing, Nathaniel E. Klein, Vice President of Hale Capital Partners, LP ("HCP") has resigned from the Company's board of directors and Martin M. Hale, Jr., CEO and Portfolio Manager of HCP, was appointed to fill the resulting vacancy. Mr. Hale was also appointed to the Company's Corporate Governance and Nominating Committee, Compensation Committee, and Budget/Work Plan Committee.

Prior to founding HCP in 2007, Martin was a founding member of Pequot Ventures (now known as FirstMark Capital) where he served as a member of the General Partner. From 2002 to 2007, Martin was a Managing Director and a Member of the Operating & Investment Committees helping to lead 7 funds with approximately US\$2.2 billion under management. Prior to Pequot Ventures, Martin was an Associate at Geocapital Partners and an Analyst at Broadview International. He currently serves as Chairman of Telanetix, Inc. and is a board member of United Silver Corporation and Adept Technology. He received his B.A. cum laude from Yale University.

In connection with the Transaction, EREF-MID II, LLC ("EREF-MID II") and HCP-MID, LLC ("HCP-MID"), both funds managed by an affiliate of HCP, acquired 17,837,838 Preferred Shares pursuant to share purchase agreements entered into with Midway on November 21, 2012. Midway has been advised by HCP that after giving effect to the Transaction, EREF-MID II, HCP-MID and their respective affiliates, acquired control or direction over a total of 17,837,838 Preferred Shares of Midway, representing approximately 47% of the outstanding Preferred Shares of Midway and further, upon conversion of the Preferred Shares into common shares of Midway (the "Common Shares"), and together with common share purchase warrants currently held by HCP and its affiliates, HCP and its affiliates would hold 27,949,522 Common Shares, representing approximately 15.5% of the issued and outstanding Common Shares on a fully diluted basis (calculated as if all outstanding warrants and options to purchase Common Shares were exercised).

In connection with the Transaction, INV-MID, LLC ("INV-MID") acquired 20,000,000 Preferred Shares pursuant to a share purchase agreement entered into with Midway on November 21, 2012. Midway has been advised by INV-MID that after giving effect to the Transaction, INV-MID acquired control or direction over a total of 20,000,000 Preferred Shares of Midway, representing approximately 53% of the outstanding Preferred Shares of Midway, and further, upon conversion of the Preferred Shares into Common Shares, INV-MID would hold 20,000,000 Common Shares, representing approximately 11% of

the issued and outstanding Common Shares on a fully diluted basis (calculated as if all outstanding warrants and options to purchase Common Shares were exercised).

The primary use of proceeds from the private placement will be to advance the Pan heap leach gold project towards production, including the ordering of long-lead time capital equipment, as well as engineering studies to advance the Gold Rock project.

The Preferred Shares and Common Shares issuable upon conversion of the Preferred Shares are subject to a customary Canadian hold period until April 14, 2013 and are restricted securities under the U.S. Securities Act of 1933, as amended.

Neither the Preferred Shares nor the Common Shares issuable upon conversion of the Preferred Shares or in lieu of cash dividend payments have been registered under the United States Securities Act of 1933, as amended, or the securities laws of any state. Each Preferred Share is convertible into Common Shares of the Company on a 1 to 1 basis. Midway granted the investors registration rights in connection with the offering. The securities may be offered or sold only under exemptions from these registration requirements. This press release does not constitute an offer of securities.

#### **ON BEHALF OF THE BOARD**

"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

#### **About Midway Gold Corp.**

Midway Gold Corp. is a precious metals company with a vision to explore, design, build and operate gold mines in a manner accountable to all stakeholders while assuring return on shareholder investments. For more information about Midway, please visit our website at [www.midwaygold.com](http://www.midwaygold.com) or contact R.J. Smith, Vice President of Administration, at (877) 475-3642 (toll-free).

#### **About Hale Capital Partners**

Based in New York City, Hale Capital Partners has established itself as a leading private equity firm focused on strategic investments in public companies and their subsidiaries. Hale Capital Partners' team is comprised of seasoned private equity veterans and entrepreneurs, who bring not only deep domain expertise but also hands-on operating experience to help build highly successful companies. Hale Capital Partners' mining portfolio spans all stages of mine development from exploration to commercial production.

*Neither the TSX Venture Exchange, its Regulation Services Provider (as that term is defined in the policies of the TSX Venture Exchange) nor the NYSE MKT accepts responsibility for the adequacy or accuracy of this release.*

*This press release contains forward-looking statements within the meaning of Canadian and United States securities laws about the Company and its business which may include, but is not limited to, the Company's intended use of proceeds, the ability to complete construction plans for the Pan Project, the plans for development of the Gold Rock Project and other statements that are not historical fact. Such forward-looking statements and forward-looking information reflect our current views with respect to future use of proceeds and are subject to certain risks, uncertainties and assumptions, including but not limited to risks related to delays in closing, the receipt of regulatory approvals and changes in market conditions. The forward-looking statements in this press release are subject to various risks, uncertainties and other factors that could cause the Company's actual results or achievements to differ materially from those expressed in or implied by forward looking statements. These risks, uncertainties and other factors include, without limitation, risks related to the timing and completion of the Company's intended work plans, risks related to fluctuations in gold prices; uncertainties related to raising sufficient financing to fund the planned work in a timely manner and on acceptable terms; changes in planned work resulting from weather; logistical, technical or other factors; the possibility that results of work will not fulfill expectations and realize the perceived potential of the Company's properties; uncertainties involved in the interpretation of*

*drilling results and other tests and the estimation of gold resources and reserves; the possibility that required permits may not be obtained on a timely manner or at all; the possibility that capital and operating costs may be higher than currently estimated and may preclude commercial development or render operations uneconomic; the possibility that the estimated recovery rates may not be achieved; risk of accidents, equipment breakdowns and labor disputes or other unanticipated difficulties or interruptions; the possibility of cost overruns or unanticipated expenses in the work program; and other factors identified in the Company's SEC filings and its filings with Canadian securities regulatory authorities. Forward-looking statements are based on the beliefs, opinions and expectations of the Company's management at the time they are made, and other than as required by applicable securities laws, the Company does not assume any obligation to update its forward-looking statements if those beliefs, opinions or expectations, or other circumstances, should change.*

## EXHIBIT 5

EX-99.1 2 newsrelease.htm PRESS RELEASE, DATED JULY 30, 2013



## **Midway Updates Progress at Pan Project, Nevada**

July 30, 2013

Denver, Colorado – Midway Gold Corp. (TSX and NYSE-MKT: MDW) (the “Company”) reports that the Company’s Pan heap leach gold project (“Pan”) is on schedule for construction in Q4 2013 and production in 2014. Permitting, financing, and engineering optimization continue to advance on schedule. For the financing discussions, an updated feasibility study will incorporate optimization and detailed engineering conducted after the November 2011 Feasibility. The revised FS with updated costs is expected in Q3.

### **A Message from Ken Brunk – Chairman, President and CEO of Midway**

Time flies when one is busy! It has been several months since we have updated our shareholders and other interested followers of Midway on our activities and progress. We have been extremely busy permitting, updating the Pan project technical and financial information, evaluating details within the heap leach operating parameters, conducting a trial blast to get rock breakage and powder factor confirmation, performing additional large scale, 25-ton leach tests, optimizing the mine plan and dig plans, re-evaluating the operating costs, re-visiting the capital costs, improving the construction plan and schedule, performing in-depth risk analyses of every aspect of the project and examining financing alternatives for the balance of funding needed to bring the project to production in August of 2014.

You might ask, “Why all this activity for a project with already impressive economics?” The answer is simple; it is our goal to optimize our cost parameters in order to deliver better returns to our shareholders, especially in the current environment.

The most significant event for Midway will be the creation of profitable cash flow from the Pan Mine. Planning for the creation of this cash flow stream began over three years ago with the design of a plan to develop the Pan project into a producing facility. We have been operating on that plan since April 2010. We are within three

weeks of that original schedule and production for Pan is within six weeks of the original target. That does not mean that every internal segment of the schedule has seen no variance; it does mean that the overall schedule has been managed such that we expect to pour gold in August of 2014. I believe that such performance speaks well for the team.

We will issue an updated feasibility study and an updated 43-101 Technical Report on the results of our work in the coming weeks. I am confident that the update will provide a level of comfort that Pan remains a good project. The attributes of nearby infrastructure, easy mining, simple metallurgy, solid engineering, a seasoned operating team and 60 plus million dollars in the bank all contribute toward the project's success. Let's discuss some of the aspects of the project in a bit more detail.

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## Permitting

We are still on our schedule for the achievement of a favorable record of decision in September of this year. That schedule allows construction to commence in October. The BLM's third party contractor is currently addressing comments and responses received from the Draft Environmental Impact Statement (EIS) public comment period. These comments will be included in the Final EIS. Major permits received to date include the *Water Pollution Control* permit and the *Class I Air Quality Operating Permit to Construct*. While Midway anticipates no Mercury emissions, a *Class I Operating Permit to Construct: Mercury* is required and is expected to be complete in the near future.

## Metallurgical Test Work & First Blast at Pan

Post-feasibility metallurgical test work at Pan has focused on ways to reduce the number of stages of crushing needed thereby delaying the crusher capital expenditures. Large column tests on bulk samples showed excellent gold recoveries from coarse materials. The preliminary results indicate that gold recoveries are less sensitive to crush size than was outlined in the 2011 Feasibility Study. In June of this year, the Company conducted the first blast at Pan to obtain material for tests of Run of Mine potential. This also provided a test of the blast pattern, powder factor, and sampling procedures planned for use during initial mining. The Run of Mine metallurgical testing is still in progress.

## Pan Project Financing Update

Midway is pursuing a combination of project and equipment financing alternatives, and has received proposals from several major commercial funding sources. The Company has been working with its financial advisors to assess the amount of financing needed and the various options available in the current market to secure the remaining capital necessary to fund Pan to cash flow. The current finance plan does not consider issuing additional equity that would dilute current shareholders. Accordingly, Midway terminated the September 23, 2011 "At-the-Market" share issuance program effective July 29, 2013.

## Pan Updated Feasibility

The company is updating the 2011 Pan Feasibility Study for use in financing negotiations and in forward planning for internal purposes. The update will incorporate post-feasibility optimization changes to the mine plan and will bring feasibility costs up to date. The project timeline for Pan is still on track for Q4 construction and production in 2014.

This release has been reviewed and approved for Midway by William S. Neal (M.Sc., CPG), Vice President of Geological Services of Midway, a "qualified person" as that term is defined in NI 43-101.

## ON BEHALF OF THE BOARD

"Kenneth A. Brunk"

AA 097

Kenneth A. Brunk, Chairman, President and CEO

### **About Midway Gold Corp.**

Midway Gold Corp. is a precious metals company with a vision to explore, design, build and operate gold mines in a manner accountable to all stakeholders while assuring return on shareholder investments. For more information about Midway, please visit our website at [www.midwaygold.com](http://www.midwaygold.com) or contact Jaime Wells, Investor Relations Analyst, at (877) 475-3642 (toll-free).

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*Neither the TSX, its Regulation Services Provider (as that term is defined in the policies of the TSX) nor the NYSE MKT accepts responsibility for the adequacy or accuracy of this release.*

*This press release contains forward-looking statements about the Company and its business. Forward looking statements are statements that are not historical facts and include, but are not limited to, statements about the Company's intended work plans and resource estimates and potential offering of common shares of the Company from time to time. The forward-looking statements in this press release are subject to various risks, uncertainties and other factors that could cause the Company's actual results or achievements to differ materially from those expressed in or implied by forward looking statements. These risks, uncertainties and other factors include, without limitation, risks related to the timing and completion of the Company's intended work plans, risks related to fluctuations in gold prices; uncertainties related to raising sufficient financing to fund the planned work in a timely manner and on acceptable terms; changes in planned work resulting from weather, logistical, technical or other factors; the possibility that results of work will not fulfill expectations and realize the perceived potential of the Company's properties; uncertainties involved in the interpretation of drilling results and other tests and the estimation of gold resources and reserves; the possibility that required permits may not be obtained on a timely manner or at all; the possibility that capital and operating costs may be higher than currently estimated and may preclude commercial development or render operations uneconomic; the possibility that the estimated recovery rates may not be achieved; risk of accidents, equipment breakdowns and labor disputes or other unanticipated difficulties or interruptions; the possibility of cost overruns or unanticipated expenses in the work program; and other factors identified in the Company's SEC filings and its filings with Canadian securities regulatory authorities. Forward-looking statements are based on the beliefs, opinions and expectations of the Company's management at the time they are made, and other than as required by applicable securities laws, the Company does not assume any obligation to update its forward-looking statements if those beliefs, opinions or expectations, or other circumstances, should change.*

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## EXHIBIT 6

EX-99.1 2 newsrelease.htm PRESS RELEASE, DATED SEPTEMBER 17, 2013



## **IMPRESSIVE RUN-OF-MINE TEST RESULTS AT MIDWAY'S PAN PROJECT, NEVADA**

September 17, 2013

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (MDW:TSX, MDW:NYSE-MKT) reports positive preliminary results from metallurgical test work on run-of mine (ROM) bulk samples at Pan. Observed gold recoveries of 92% after 58 days indicate gold recovery of the South Pan ore is not sensitive to crush size. These metallurgical results suggest the South Pan ore can be processed with ROM leaching and that a crusher installation and spend at Pan can be deferred for at least 18 to 24 months.

Ken Brunk, President and CEO of Midway states, "We are very excited by these new ROM test results. We saw indications in the 2010 pre-feasibility and 2011 feasibility column testing of South Pan ores that gold recovery seemed insensitive to crush size. However, due to permitting constraints we were unable to begin comprehensive ROM test work. Therefore, we elected to include crushers in the initial project, as we will need them for the North Pit ore regardless of South Pit design factors.

Since the November 2011 feasibility, we have continued to permit and test bulk samples of larger and larger particle size with favorable results. Our permitting team obtained permission from the BLM to conduct a trial blast in July at South Pan from which we could obtain true ROM ore for testing. Representative samples of the blasted ore were sent to Kappes-Cassidy & Associates (KCA) laboratories in Reno for leaching in large columns to simulate a ROM leaching operation. The duplicate 4 feet diameter columns are stacked with approximately 20,000 pounds of ROM ore each to a height of 15 feet and have already resulted in a gold recovery of 92% at 58 days. These excellent leaching results and leach kinetics are due to the fact that the rock is porous and permeable. In other words, the rock readily allows the leach solution to flow through the ore and to easily dissolve the gold.

The results of the large column tests lead the project team and management to conclude that ROM leaching is a viable option for South Pan. The excellent extraction of gold from the large-scale bulk sample also supports retaining the 85% recovery that is now confirmed by all the detailed test work to date. The size analysis of the large column test feed material is consistent with, and perhaps a bit coarser, than that from my experience with other ROM leaches on Carlin style formations. Midway will work with these large column results and use them to further refine our Pan project. Continued optimization of the mine plan will occur to ultimately dictate when the crushers will be needed."

### **Test Details**

Figure 1 below is a graph showing the gold recoveries from feasibility study and pre-feasibility study metallurgical test work. It shows that the percent gold recovery is essentially the same for particle sizes from one-half inch in size to 7 inches in size. These results were obtained from column leaching of drill core and from bulk samples gathered from backhoe-dug trenches on site.

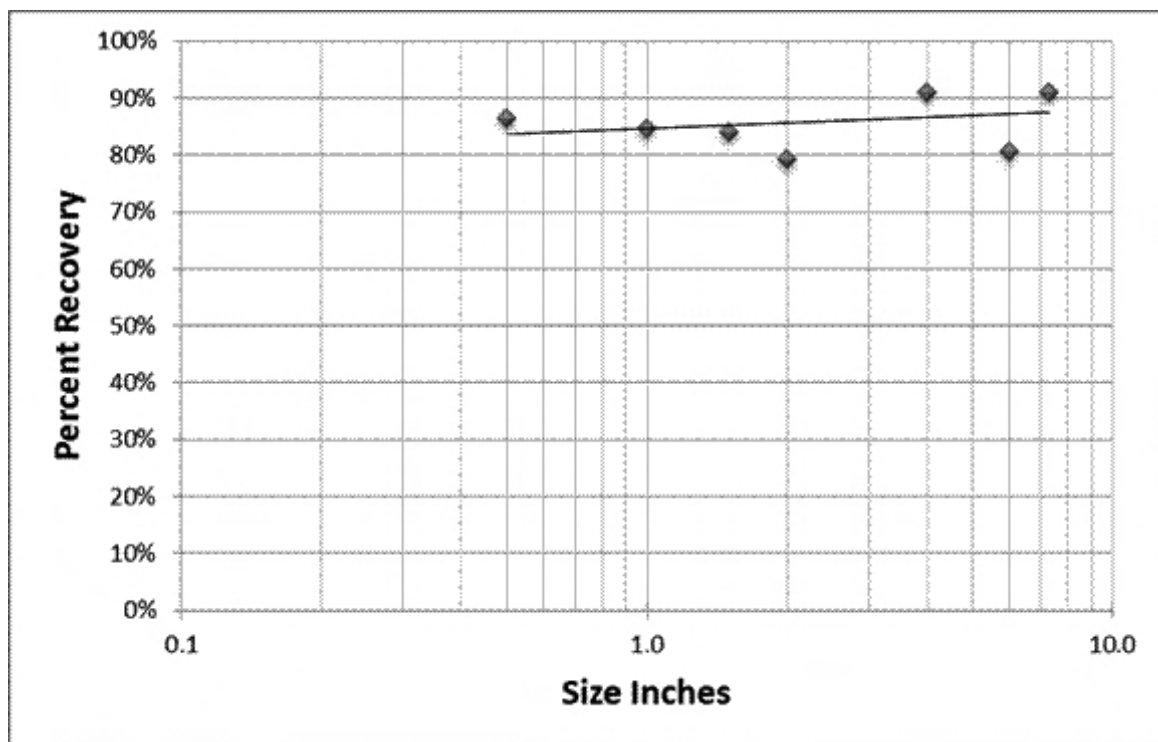
Figure 2 shows the current in-progress gold recovery from the ROM tests that are being run at KCA labs. These tests are still leaching and will remain for approximately another 60 days to allow for the collection of additional design information. The particle size of the ore in the test columns ranges from 24 inches to less than 0.1 inches. The P-80 is 7.3 inches. This means that 80% of the ore is 7.3 inches or less in size. Also, only 15% the rock in the test columns is less than 0.1 inches. Test results are preliminary and final results could vary once final tailings are assayed.

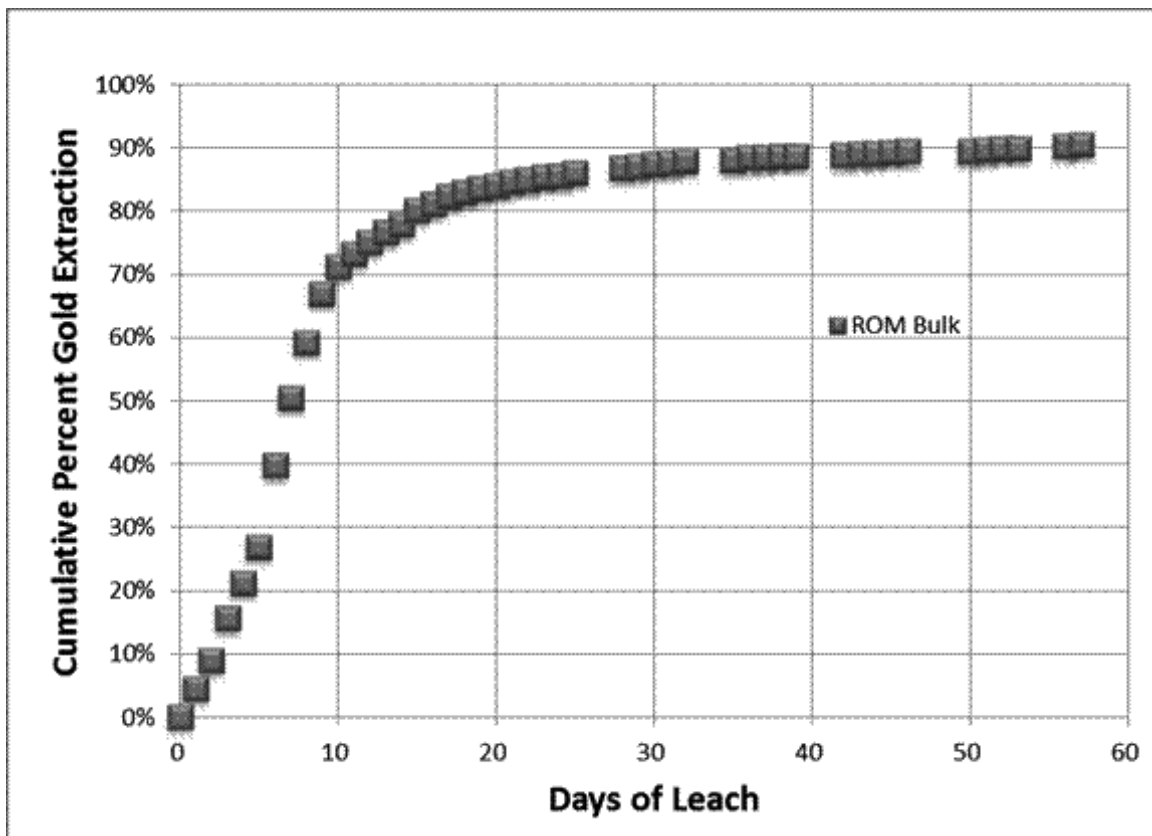
### Other Project Updates

The Pan project is in the final stages of the NEPA process. A Record of Decision is expected before year-end, which will be followed 30 days later by construction. Midway is targeting startup of operations in the third quarter of 2014.

Midway has engaged Sierra Partners as a financial advisor to evaluate and guide the Company in putting in place the balance of the financing needed to construct the Pan project. At the end of the second quarter the Company had a cash position of \$65.8M and expects to have the remaining financing in place by year-end.

**Figure 1. Pan South Area Gold Recoveries vs. Crush Size**



**Figure 2. Recovery vs. Leach Cycle in Days****Pan Gold Project, Nevada**

The Pan project is an oxidized, Carlin-style gold deposit mineable by shallow open pit methods and treatable by heap leaching. A Feasibility Study was completed in November 2011. It shows the NPV of the project is robust at a range of gold prices, ranging from \$123 million at \$1,200/oz gold to \$344 million \$1,900/oz gold. The IRR grows from 32% to 79% using the same gold price range. Both are after-tax figures (see press release dated November 15, 2011.)

This release has been reviewed and approved for Midway by Deepak Molhatra (PhD Mineral Economics, MS Metallurgical Engineering), President of Resource Development, Inc., and a "qualified person" as that term is defined in NI 43-101.

**ON BEHALF OF THE BOARD**

"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

**About Midway Gold Corp.**

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# EXHIBIT 7

EX-99.1 2 newsrelease.htm PRESS RELEASE, DATED DECEMBER 20, 2013



## **MIDWAY GOLD COMPLETES PERMITTING – RECEIVES RECORD OF DECISION PAN PROJECT, NEVADA**

December 20, 2013

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (MDW:TSX, MDW:NYSE-MKT) announces receipt of a December 20, 2013 signed Record of Decision (ROD) on the Final Environmental Impact Statement (EIS) for the Pan gold project, White Pine County, Nevada. The ROD signifies full completion of the required NEPA and EIS process. The ROD represents the final step in the federal permitting process and allows construction to begin.

“We are permitted at Pan. This is truly a groundbreaking accomplishment for Midway Gold and a great Christmas present for all who have been a part of the Midway story over the past few years,” said Ken Brunk, Midway’s President & CEO. “We advanced from the Notice of Intent to the Record of Decision in a record 20 months. We would like to thank everyone here at Midway, especially our permitting team, for a job very well done. We respect the professionalism of the cooperating agencies and their effectiveness to complete the process in a timely manner. We would also like to thank the local communities and, of course, our shareholders for the endless support. We are very excited to have completed this permitting process and are ready to begin construction!”

### **What is the NEPA and the EIS Process?**

The Environmental Impact Statement (EIS) for the Pan project is required under the National Environmental Policy Act (NEPA). The act sets up procedural requirements for all federal governmental agencies to prepare environmental assessments and environmental impact statements in response to proposed major activities on federal lands. The Pan project is on federal land administered by the Bureau of Land Management (BLM). Therefore, NEPA requires the BLM to prepare an EIS to analyze potential environmental consequences of the planned project and any reasonable alternatives. Midway has advanced through baseline studies, the Draft EIS,



the Final EIS, and has now completed the process with the **Record of Decision**. Numerous state permits are also required and have been obtained from various state agencies.

### **Pan Gold Project, Nevada**

The Pan project is a low cost, oxidized, Carlin-style gold deposit mineable by shallow open pit methods and treatable by heap leaching. A Feasibility Study was completed in November 2011. It shows the NPV of the project is robust at a range of gold prices, ranging from \$123 million at \$1,200/oz gold to \$344 million \$1,900/oz gold. The IRR grows from 32% to 79% using the same gold price range. Both are after-tax figures (see press release dated November 15, 2011.)

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**ON BEHALF OF THE BOARD****"Kenneth A. Brunk"****Kenneth A. Brunk, Chairman, President and CEO****About Midway Gold Corp.**

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## EXHIBIT 8

EX-99.1 2 newsrelease.htm PRESS RELEASE, DATED JANUARY 15, 2014



## **MIDWAY BREAKS GROUND AT PAN GOLD PROJECT, NEVADA**

January 15, 2014

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (MDW:TSX, MDW:NYSE-MKT) holds a formal groundbreaking ceremony at the site of the Pan Project, White Pine County, Nevada. The project is fully permitted and construction is underway with completion estimated for Q3 2014. A Record of Decision from the BLM signed on December 20, 2013 completed the EIS process. Bonding for construction and mining is in place. Equipment has been mobilized to site and earth works are in progress. The power line to site has been permitted and construction has begun.

"This groundbreaking ceremony is the kick off for building the Pan mine," said Ken Brunk, Midway's President & CEO. "It is an opportunity for us to acknowledge those who drove the process from exploration through permitting and development. Many times, we have expressed our thanks to our permitting team and today is one more valuable opportunity to do so. Without their hard work and commitment to both excellent science and schedule we would not be where we are today. Additionally, we are proud to recognize Mr. Alan Branham, former president and CEO of Midway, for his leadership in acquiring the Pan project for Midway and for his vision that Pan would one day become a mine."

### **Pan Gold Project, Nevada**

The Pan project is a low cost, oxidized, Carlin-style gold deposit mineable by shallow open pit methods and treatable by heap leaching. A Feasibility Study was completed in November 2011. It shows the NPV of the project is robust at a range of gold prices, ranging from \$123 million at \$1,200/oz gold to \$344 million at \$1,900/oz gold. The IRR grows from 32% to 79% using the same gold price range. Both are after-tax figures (see press release dated November 15, 2011.)

### **ON BEHALF OF THE BOARD**

"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

**About Midway Gold Corp.**

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## EXHIBIT 9



MIDWAY GOLD

CORPORATE HEADQUARTERS  
8310 S Valley Highway, Suite 280, Englewood, CO 80112  
720.979.0900

## MIDWAY FORECASTS CAPITAL REDUCTIONS PAN PROJECT, NEVADA

April 24, 2014

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (MDW:TSX, MDW:NYSE-MKT) is pleased to provide an update on recent developments and scope changes at the Pan Project including potential reduction in pre-production capital requirements. Construction at Pan remains on-track for initial production in 2014.

"We are excited by our progress at Pan," said Ken Brunk CEO and President. "Our team has worked diligently during the last few months to advance our first project through construction while also finding ways to cut our costs. We believe we can significantly reduce our borrowing needs by employing two significant scope changes to the project—the utilization of a contract miner for early years of mining, and leaching the South Pan ore body by run-of-mine methods thereby deferring the purchase and installation of a crusher plant. We are also fortunate to have had our construction contracts that have been let to date come in at or very close to our feasibility estimates. With these recent reductions in initial capital requirements and our current strong cash balance, we look forward to completing project financing within the coming weeks. We are pleased that the third party engineers that have evaluated the project on behalf of potential lenders have found no "fatal flaws" in any of these approaches or with the project."

### RECENT PROJECT SCOPE CHANGES

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### Transition to Contract Mining

Midway has elected to pursue contract mining in the initial years at Pan. Midway had planned to pursue owner mining (as referenced in the 2011 Feasibility Study). However, conditions in the mining industry have led to an increasingly attractive price environment for contract mining. A mining contractor will provide all mining-related services, manpower and equipment for the Pan Project. They will be directly responsible for drilling, blasting, loading, and hauling ore to the leach pad for processing by Midway. Contract mining reduces the initial capital requirements for Pan by deferring purchase of the planned mine fleet. It also minimizes initial start-up and operational risks.

### Elimination of Crushing in Initial Mine Years

The Company has elected to defer purchase and installation of crushers for the first 2-3 years of the mine life at Pan. The November 2011 Feasibility Study included a 2-stage crushing circuit at South Pan. Detailed metallurgical tests confirm this ore responds favorably to run-of-mine leaching. Deferral of crushing circuit equipment and installation is expected to reduce initial capital expenditures. There is also potential to lower operating costs associated with the deferral of the crushers. Midway is currently evaluating the extent of such potential savings.

### PROJECT FINANCING

Midway is currently well funded with \$48M in cash as of December 31, 2013. Construction progress remains on track for 2014 gold production at Pan. Project financing is well advanced and expected to be complete in the second quarter of 2014. Financing is being designed to retain gold price upside for our shareholders. Midway is striving to maximize returns on capital invested and return on equity, and has evaluated a variety of debt financing alternatives, both traditional and non-



traditional. In depth, third party due diligence for the Pan project has resulted in a determination of no "fatal flaws" for prospective lenders.

#### Pan Gold Project, Nevada

The Pan project is a low cost, oxidized, Carlin-style gold deposit mineable by shallow open pit methods and treatable by heap leaching.

This release has been reviewed and approved for Midway by Rick Moritz a "qualified person" as that term is defined in NI 43-101.

#### ON BEHALF OF THE BOARD

"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

#### About Midway Gold Corp.

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## EXHIBIT 10

EX-99.1 2 newsrelease.htm PRESS RELEASE, DATED MAY 22, 2014

**MIDWAY GOLD**CORPORATE HEADQUARTERS  
8310 S Valley Highway, Suite 280, Englewood, CO 80112  
**720.979.0900** A NEW BENCHMARK

**MIDWAY EXECUTES COMMITMENT LETTER  
FOR US\$55 MILLION PROJECT FINANCE FACILITY WITH COMMONWEALTH  
BANK OF AUSTRALIA  
PAN PROJECT, NEVADA**

May 22, 2014

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (MDW:TSX, MDW:NYSE-MKT) announces the signing of a binding commitment letter with Commonwealth Bank of Australia ("Commonwealth Bank") for a US\$55 million 3-year senior secured project finance facility (the "Loan Facility") for the development of the Company's 100%-owned Pan Gold Mine in White Pine County, Nevada. Closing is expected to occur by the end of June 2014.

The Loan Facility is comprised of two tranches, a project finance facility of US\$45 million plus a cost overrun facility of US\$10 million. Advances under the project finance facility will bear interest at LIBOR plus 3.5% to 3.75%, and advances under the cost overrun facility will bear interest at the project finance facility rate plus 2%.

Ken Brunk, President and CEO of Midway, states, "We are pleased to be able to announce this major milestone for our Company and to have Commonwealth Bank as a new financial partner as we work toward gold production and positive cash flow. Our progress to date through permitting and financing speaks to the high quality of our first project and we look forward to achieving the highest return we can for our shareholders. We would like to thank our employees for their continued hard work and our shareholders and local community members for their support through this extensive process. We have committed approximately \$21 million to project construction to date and the build out is about 20% complete."

NYSE MKT: **MDW** // TSX: **MDW** // **MIDWAYGOLD.COM**CONNECT   

May 19, 2014

**Additional Loan Facility Information**

The Loan Facility is subject to completion of loan and security documentation and customary conditions precedent to closing, and will be secured by substantially all of the assets of the borrower (MDW Pan LLP, which is comprised solely of the Pan Project) and its affiliates. Upon achieving economic completion and meeting certain other requirements, security will be limited to the assets of MDW Pan LLP and guarantees from the Company and an affiliate. Closing is expected to occur at the end of June 2014.

A condition precedent to draw on the loan is the establishment of an un-margined hedging program through Commonwealth Bank, which provides downside protection for the Company's debt. This program will cover a period of less than two years commencing approximately six months after the planned start of production and is expected to comprise an estimated 11% of the Project's anticipated life-of-mine production based on the current reserve base (See November 2011 Resource Estimate) assuming a spot gold price of approximately \$1300/oz.

**About Pan**

The Pan project is a low cost, oxidized, Carlin-style gold deposit mineable by shallow open pit methods and treatable by heap leaching. A feasibility study was completed in November 2011. The project is fully permitted (December 2013) and is currently under construction.

This release has been reviewed and approved for Midway by Dave Mosch, Corporate Mining Engineering at Midway and a "qualified person" as that term is defined in NI 43-101.

May 19, 2014



## ON BEHALF OF THE BOARD

"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

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# EXHIBIT 11

## **TOLLING AGREEMENT**

This Tolling Agreement (the "Agreement") is made and entered into as of June 2, 2016 (the "Effective Date"), by and between Daniel E. Wolfus and George Hawes, as well as the individuals and entities which have assigned their claims to Mr. Wolfus or Mr. Hawes, respectively (collectively referred to herein as "Plaintiffs") on the one hand, and Kenneth A. Brunk, Richard Moritz, Brad Blacketer, Timothy Haddon, Martin Hale, Trey Anderson, Richard Sawchak, Frank Yu, John Sheridan, Roger Newell, Rodney Knutson, and Nathaniel Klein (referred to jointly and/or severally as the "Midway Directors and Officers") on the other hand. The Plaintiffs and the Midway Directors and Officers are collectively referred to herein as the "Parties," or individually as a "Party."

**WHEREAS**, on March 29, 2016 counsel for the Plaintiffs sent a draft complaint to the Midway Directors and Officers setting forth a number of claims related to the public filings and management of Midway Gold (the "Draft Complaint"), and

**WHEREAS**, the Parties deem it to be in their mutual benefit that Plaintiffs' claims, including, but not limited to, those set forth in the Draft Complaint, and any counterclaims available against the Plaintiffs, not be asserted in litigation at the present time, and

**WHEREAS**, the Parties desire to encourage resolution and/or such further review or disposition of Plaintiffs' Claims and/or any Claims by the Midway Directors and Officers as may result in a confidential settlement and are willing to make the stipulations, covenants and agreements hereinafter set forth in order to defer and postpone the commencement of litigation, and



**WHEREAS**, the Parties desire that for the period of this Agreement, they should be able to consider issues relating to the possibility of settling disputes without regard to the time constraints that exist because of any future expiration of any applicable statute of limitations;

**NOW, THEREFORE**, in consideration of the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

1. As used in this Agreement, the following terms shall have the following meanings:
  - a) "Claims" shall mean any and all claims and/or causes of action, if any, known or unknown, Plaintiffs may have against the Midway Directors and Officers in connection with their participation in the public filings by and the management and operation of Midway Gold and its affiliated entities including, but not limited to, those set forth in the Draft Complaint, and any claims and/or causes of action, if any, known or unknown, the Midway Directors and Officers may have against Plaintiffs in connection with Plaintiffs' conduct, management, operation, and/or purchases or sales or securities of Midway Gold and its affiliated entities.
  - b) "Tolling Period" shall mean the period from and including the Effective Date of this Agreement until and including the Expiration Date (as defined below) of this Agreement.
  - c) "Expiration Date" shall mean the earlier of **September 25, 2016**, or 30 days from the date that written notice of termination of this Agreement has been served by either of the Parties on the other in accordance with paragraph 10 of this Agreement.
  - d) "Timing Defenses" shall mean and include, and shall be limited to, any affirmative defenses to any Party's Claims that another Party may have to the extent based upon (1) any statute of limitations, (2) laches, and/or (3) any failure by a Party to institute or commence litigation or other legal proceedings within some specified period, before a specified date, or before the happening of a specified event.
2. The Plaintiffs and the Midway Directors and Officers stipulate, covenant and agree that Timing Defenses applicable to the Claims shall be tolled during the Tolling Period.
3. The Plaintiffs and the Midway Directors and Officers stipulate, covenant, and agree that this Agreement shall have no effect on any Timing Defenses that may have lapsed prior to the Effective Date, and that all time periods prior to the Effective Date and after the Expiration Date

(and prior to the filing of any lawsuit or other legal proceeding by Plaintiffs subject to paragraph 5 of this Agreement) shall be included in the calculation of and running of any applicable Timing Defenses. Nothing contained herein shall preclude any Party from asserting any Timing Defenses to the extent that such defenses already exist as of the Effective Date, and nothing herein shall be deemed to revive any Claims barred as of the Effective Date.

4. The Parties stipulate, covenant, and agree that, by executing and entering into this Agreement, the Parties are not waiving or otherwise impairing by estoppel or any other means, right and ability to raise any Timing Defenses available to them for the periods prior to the Effective Date and after the Expiration Date (and prior to the filing of any lawsuit or other legal proceeding by Plaintiffs subject to paragraph 5 of this Agreement).

5. The provisions of this Agreement comprise all of the terms, conditions, agreements and representations of the Parties respecting the tolling of the Timing Defenses. This Agreement may not be altered or amended except by written agreement executed by both the Plaintiffs and the Midway Directors and Officers. The Parties hereby agree that terms of this Agreement have not been changed, modified, or expanded by any oral agreements or representations entered into or made prior to or at the execution of this Agreement.

6. The Parties hereto acknowledge that each of them has had the benefit of counsel of their choice and has been offered an opportunity to review this Agreement with chosen counsel. The Parties hereto further acknowledge that they have, individually or through their respective counsel, participated in the preparation of this Agreement, and it is understood that no provision hereof shall be construed against any party hereto by reason of either party having drafted or prepared this Agreement.

7. This Agreement may be executed in one or more original, scanned or facsimile counterparts, each of which shall be deemed an original, but also which together will constitute one and the same instrument.

8. This Agreement shall terminate on the Expiration Date as provided in paragraph 1(c) above, unless extended in writing by the parties to be bound.

9. This Agreement contains the entire agreement between the Parties with respect to its subject matter, and no statement, promise, or inducement made by any of the parties or agent of the parties that is not contained in this Agreement shall be valid or binding, and this Agreement shall not be enlarged, modified, or altered except in writing signed by the parties.

10. This Tolling Agreement shall be binding upon and inure to the benefit of the parties, their predecessors, successors, and assigns, if any.

11. This Agreement shall be construed in accordance with and be governed by the internal laws, other than choice of laws, of the State of Nevada.

12. Either the Plaintiffs or the Midway Directors and Officers may terminate this Agreement, effective 30 days after the date of serving a written notice of termination, by serving notice of termination by letter to the other party. Such notice letter shall be served by email transmission, followed by the delivery of an original of the notice letter by United States certified mail, return receipt requested, to the following persons at the following addresses:

**If to the Plaintiffs:**

Justin T. Toth  
RAY QUINNEY & NEBEKER P.C.  
36 South State Street, Suite 1400  
P.O. Box 45385  
Salt Lake City, UT 84145-0385  
Email: [jtoth@rqn.com](mailto:jtoth@rqn.com)

**If to the Midway Directors and Officers:**

Holly Stein Sollod  
Holland & Hart LLP  
555 Seventeenth Street, Suite 3200  
Denver, CO 80202-3979  
Email: [hsteinsollod@hollandhart.com](mailto:hsteinsollod@hollandhart.com)

Eric B. Liebman  
Moye White LLP  
16 Market Square 6th Floor  
1400 16th Street  
Denver CO 80202  
Email: [eric.liebman@moyewhite.com](mailto:eric.liebman@moyewhite.com)

Mark Ferrario  
Chris Miltenberger  
Greenberg Traurig LLP  
Suite 400 North  
3773 Howard Hughes Parkway  
Las Vegas NV 89134

13. On or after the Expiration Date of this Agreement, the Parties shall have the right to file and pursue any and all Claims and to seek any and all legal remedies against any other Party that may be available to them, if any, and any Party shall be entitled to assert any Timing Defenses or other defenses, if any, subject to the terms of this Agreement.

14. Nothing in this Agreement shall be construed as an admission or denial by any of the Parties as to the merits of any Party's Claims against any other Party or the merits of any Party's defenses to any Claims.

15. Neither the Parties nor any of their agents, witnesses, or attorneys will mention or allude to this Agreement, its terms, its execution, or the existence of any Tolling Period in any way, directly or indirectly, before a jury or any fact finder in any proceeding for any purpose. The terms of this paragraph will survive termination of this Agreement.

**PLAINTIFFS:**

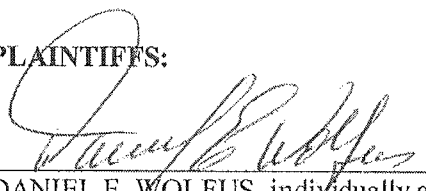
Holly Stein Sollod  
Holland & Hart LLP  
555 Seventeenth Street, Suite 3200  
Denver, CO 80202-3979  
Email: [hsteinsollod@hollandhart.com](mailto:hsteinsollod@hollandhart.com)

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**PLAINTIFFS:**

  
DANIEL E. WOLFUS, individually and as  
assignee of The Wolfus Revocable Trust,  
Christine Wolfus and Daniel Wolfus, and  
Devoney Wolfus and Stephanie Wolfus

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GEORGE HAWES, individually and as  
assignee of Christina Hawes-Mohr,  
Kathleen Hawes, Ian Hawes, and Brendan  
Hawes

Holly Stein Sollod  
Holland & Hart LLP  
555 Seventeenth Street, Suite 3200  
Denver, CO 80202-3979  
Email: [hsteinsollod@hollandhart.com](mailto:hsteinsollod@hollandhart.com)

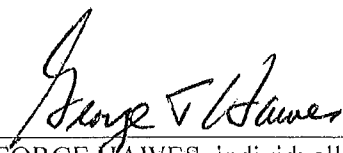
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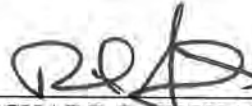
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Kathleen Hawes, Ian Hawes, and Brendan  
Hawes

**MIDWAY DIRECTORS AND  
OFFICERS:**



\_\_\_\_\_  
KENNETH A. BRUNK



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RICHARD SAWCHAK

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RICHARD MORITZ

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FRANK YU

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BRAD BLACKETOR

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RODNEY KNUTSON

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TREY ANDERSON

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NATHANIEL KLEIN

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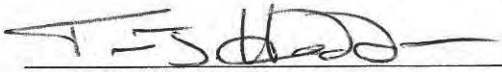
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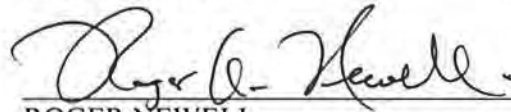
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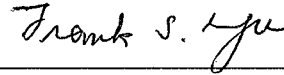
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TREY ANDERSON

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NATHANIEL KLEIN

# EXHIBIT 7

EX-99.1 2 newsrelease.htm PRESS RELEASE, DATED DECEMBER 20, 2013



## **MIDWAY GOLD COMPLETES PERMITTING – RECEIVES RECORD OF DECISION PAN PROJECT, NEVADA**

December 20, 2013

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (MDW:TSX, MDW:NYSE-MKT) announces receipt of a December 20, 2013 signed Record of Decision (ROD) on the Final Environmental Impact Statement (EIS) for the Pan gold project, White Pine County, Nevada. The ROD signifies full completion of the required NEPA and EIS process. The ROD represents the final step in the federal permitting process and allows construction to begin.

“We are permitted at Pan. This is truly a groundbreaking accomplishment for Midway Gold and a great Christmas present for all who have been a part of the Midway story over the past few years,” said Ken Brunk, Midway’s President & CEO. “We advanced from the Notice of Intent to the Record of Decision in a record 20 months. We would like to thank everyone here at Midway, especially our permitting team, for a job very well done. We respect the professionalism of the cooperating agencies and their effectiveness to complete the process in a timely manner. We would also like to thank the local communities and, of course, our shareholders for the endless support. We are very excited to have completed this permitting process and are ready to begin construction!”

### **What is the NEPA and the EIS Process?**

The Environmental Impact Statement (EIS) for the Pan project is required under the National Environmental Policy Act (NEPA). The act sets up procedural requirements for all federal governmental agencies to prepare environmental assessments and environmental impact statements in response to proposed major activities on federal lands. The Pan project is on federal land administered by the Bureau of Land Management (BLM). Therefore, NEPA requires the BLM to prepare an EIS to analyze potential environmental consequences of the planned project and any reasonable alternatives. Midway has advanced through baseline studies, the Draft EIS,

the Final EIS, and has now completed the process with the **Record of Decision**. Numerous state permits are also required and have been obtained from various state agencies.

### **Pan Gold Project, Nevada**

The Pan project is a low cost, oxidized, Carlin-style gold deposit mineable by shallow open pit methods and treatable by heap leaching. A Feasibility Study was completed in November 2011. It shows the NPV of the project is robust at a range of gold prices, ranging from \$123 million at \$1,200/oz gold to \$344 million \$1,900/oz gold. The IRR grows from 32% to 79% using the same gold price range. Both are after-tax figures (see press release dated November 15, 2011.)

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**ON BEHALF OF THE BOARD****"Kenneth A. Brunk"****Kenneth A. Brunk, Chairman, President and CEO****About Midway Gold Corp.**

Midway Gold Corp. is a precious metals company with a vision to explore, design, build and operate gold mines in a manner accountable to all stakeholders while assuring return on shareholder investments. For more information about Midway, please visit our website at [www.midwaygold.com](http://www.midwaygold.com) or contact Jaime Wells, Investor Relations Analyst, at (877) 475-3642 (toll-free).

*Neither the TSX Exchange, its Regulation Services Provider (as that term is defined in the policies of the TSX Exchange) nor the NYSE MKT accepts responsibility for the adequacy or accuracy of this release. This press release contains forward-looking statements about the Company and its business. Forward looking statements are statements that are not historical facts and include, but are not limited to, statements about the Company's intended work plans and resource estimates and potential offering of common shares of the Company from time to time. The forward-looking statements in this press release are subject to various risks, uncertainties and other factors that could cause the Company's actual results or achievements to differ materially from those expressed in or implied by forward looking statements. These risks, uncertainties and other factors include, without limitation, risks related to the timing and completion of the Company's intended work plans, risks related to fluctuations in gold prices; uncertainties related to raising sufficient financing to fund the planned work in a timely manner and on acceptable terms; changes in planned work resulting from weather, logistical, technical or other factors; the possibility that results of work will not fulfill expectations and realize the perceived potential of the Company's properties; uncertainties involved in the interpretation of drilling results and other tests and the estimation of gold resources and reserves; the possibility that required permits may not be obtained on a timely manner or at all; the possibility that capital and operating costs may be higher than currently estimated and may preclude commercial development or render operations uneconomic; the possibility that the estimated recovery rates may not be achieved; risk of accidents, equipment breakdowns and labor disputes or other unanticipated difficulties or interruptions; the possibility of cost overruns or unanticipated expenses in the work program; and other factors identified in the Company's SEC filings and its filings with Canadian securities regulatory authorities. Forward-looking statements are based on the beliefs, opinions and expectations of the Company's management at the time they are made, and other than as required by applicable securities laws, the Company does not assume any obligation to update its forward-looking statements if those beliefs, opinions or expectations, or other circumstances, should change.*

## EXHIBIT 8

EX-99.1 2 newsrelease.htm PRESS RELEASE, DATED JANUARY 15, 2014



## **MIDWAY BREAKS GROUND AT PAN GOLD PROJECT, NEVADA**

January 15, 2014

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (MDW:TSX, MDW:NYSE-MKT) holds a formal groundbreaking ceremony at the site of the Pan Project, White Pine County, Nevada. The project is fully permitted and construction is underway with completion estimated for Q3 2014. A Record of Decision from the BLM signed on December 20, 2013 completed the EIS process. Bonding for construction and mining is in place. Equipment has been mobilized to site and earth works are in progress. The power line to site has been permitted and construction has begun.

"This groundbreaking ceremony is the kick off for building the Pan mine," said Ken Brunk, Midway's President & CEO. "It is an opportunity for us to acknowledge those who drove the process from exploration through permitting and development. Many times, we have expressed our thanks to our permitting team and today is one more valuable opportunity to do so. Without their hard work and commitment to both excellent science and schedule we would not be where we are today. Additionally, we are proud to recognize Mr. Alan Branham, former president and CEO of Midway, for his leadership in acquiring the Pan project for Midway and for his vision that Pan would one day become a mine."

### **Pan Gold Project, Nevada**

The Pan project is a low cost, oxidized, Carlin-style gold deposit mineable by shallow open pit methods and treatable by heap leaching. A Feasibility Study was completed in November 2011. It shows the NPV of the project is robust at a range of gold prices, ranging from \$123 million at \$1,200/oz gold to \$344 million at \$1,900/oz gold. The IRR grows from 32% to 79% using the same gold price range. Both are after-tax figures (see press release dated November 15, 2011.)

### **ON BEHALF OF THE BOARD**

"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

**About Midway Gold Corp.**

Midway Gold Corp. is a precious metals company with a vision to explore, design, build and operate gold mines in a manner accountable to all stakeholders while assuring return on shareholder investments. For more information about Midway, please visit our website at [www.midwaygold.com](http://www.midwaygold.com) or contact Jaime Wells, Investor Relations Analyst, at (877) 475-3642 (toll-free).

*Neither the TSX Exchange, its Regulation Services Provider (as that term is defined in the policies of the TSX Exchange) nor the NYSE MKT accepts responsibility for the adequacy or accuracy of this release. This press release contains forward-looking statements about the Company and its*

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## EXHIBIT 9



MIDWAY GOLD

CORPORATE HEADQUARTERS  
8310 S Valley Highway, Suite 280, Englewood, CO 80112  
720.979.0900

## MIDWAY FORECASTS CAPITAL REDUCTIONS PAN PROJECT, NEVADA

April 24, 2014

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (MDW:TSX, MDW:NYSE-MKT) is pleased to provide an update on recent developments and scope changes at the Pan Project including potential reduction in pre-production capital requirements. Construction at Pan remains on-track for initial production in 2014.

"We are excited by our progress at Pan," said Ken Brunk CEO and President. "Our team has worked diligently during the last few months to advance our first project through construction while also finding ways to cut our costs. We believe we can significantly reduce our borrowing needs by employing two significant scope changes to the project—the utilization of a contract miner for early years of mining, and leaching the South Pan ore body by run-of-mine methods thereby deferring the purchase and installation of a crusher plant. We are also fortunate to have had our construction contracts that have been let to date come in at or very close to our feasibility estimates. With these recent reductions in initial capital requirements and our current strong cash balance, we look forward to completing project financing within the coming weeks. We are pleased that the third party engineers that have evaluated the project on behalf of potential lenders have found no "fatal flaws" in any of these approaches or with the project."

### RECENT PROJECT SCOPE CHANGES

NYSE MKT: MDW TSX: MDW MIDWAYGOLD.COM

connect 720



### Transition to Contract Mining

Midway has elected to pursue contract mining in the initial years at Pan. Midway had planned to pursue owner mining (as referenced in the 2011 Feasibility Study). However, conditions in the mining industry have led to an increasingly attractive price environment for contract mining. A mining contractor will provide all mining-related services, manpower and equipment for the Pan Project. They will be directly responsible for drilling, blasting, loading, and hauling ore to the leach pad for processing by Midway. Contract mining reduces the initial capital requirements for Pan by deferring purchase of the planned mine fleet. It also minimizes initial start-up and operational risks.

### Elimination of Crushing in Initial Mine Years

The Company has elected to defer purchase and installation of crushers for the first 2-3 years of the mine life at Pan. The November 2011 Feasibility Study included a 2-stage crushing circuit at South Pan. Detailed metallurgical tests confirm this ore responds favorably to run-of-mine leaching. Deferral of crushing circuit equipment and installation is expected to reduce initial capital expenditures. There is also potential to lower operating costs associated with the deferral of the crushers. Midway is currently evaluating the extent of such potential savings.

## PROJECT FINANCING

Midway is currently well funded with \$48M in cash as of December 31, 2013. Construction progress remains on track for 2014 gold production at Pan. Project financing is well advanced and expected to be complete in the second quarter of 2014. Financing is being designed to retain gold price upside for our shareholders. Midway is striving to maximize returns on capital invested and return on equity, and has evaluated a variety of debt financing alternatives, both traditional and non-





traditional. In depth, third party due diligence for the Pan project has resulted in a determination of no "fatal flaws" for prospective lenders.

#### Pan Gold Project, Nevada

The Pan project is a low cost, oxidized, Carlin-style gold deposit mineable by shallow open pit methods and treatable by heap leaching.

This release has been reviewed and approved for Midway by Rick Moritz a "qualified person" as that term is defined in NI 43-101.

#### ON BEHALF OF THE BOARD

"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

#### About Midway Gold Corp.

Midway Gold Corp. is a precious metals company with a vision to explore, design, build and operate gold mines in a manner accountable to all stakeholders while assuring return on shareholder investments. For more information about Midway, please visit our website at [www.midwaygold.com](http://www.midwaygold.com) or contact Jaime Wells, Investor Relations Analyst, at (877) 475-3642 (toll-free).

## EXHIBIT 10

EX-99.1 2 newsrelease.htm PRESS RELEASE, DATED MAY 22, 2014

**MIDWAY GOLD**

CORPORATE HEADQUARTERS  
8310 S Valley Highway, Suite 280, Englewood, CO 80112  
**720.979.0900**

 A NEW BENCHMARK

**MIDWAY EXECUTES COMMITMENT LETTER  
FOR US\$55 MILLION PROJECT FINANCE FACILITY WITH COMMONWEALTH  
BANK OF AUSTRALIA  
PAN PROJECT, NEVADA**

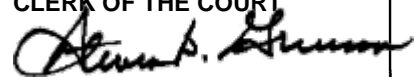
May 22, 2014

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (MDW:TSX, MDW:NYSE-MKT) announces the signing of a binding commitment letter with Commonwealth Bank of Australia ("Commonwealth Bank") for a US\$55 million 3-year senior secured project finance facility (the "Loan Facility") for the development of the Company's 100%-owned Pan Gold Mine in White Pine County, Nevada. Closing is expected to occur by the end of June 2014.

The Loan Facility is comprised of two tranches, a project finance facility of US\$45 million plus a cost overrun facility of US\$10 million. Advances under the project finance facility will bear interest at LIBOR plus 3.5% to 3.75%, and advances under the cost overrun facility will bear interest at the project finance facility rate plus 2%.

Ken Brunk, President and CEO of Midway, states, "We are pleased to be able to announce this major milestone for our Company and to have Commonwealth Bank as a new financial partner as we work toward gold production and positive cash flow. Our progress to date through permitting and financing speaks to the high quality of our first project and we look forward to achieving the highest return we can for our shareholders. We would like to thank our employees for their continued hard work and our shareholders and local community members for their support through this extensive process. We have committed approximately \$21 million to project construction to date and the build out is about 20% complete."

NYSE MKT: **MDW** // TSX: **MDW** // **MIDWAYGOLD.COM**CONNECT   



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

**EIGHTH JUDICIAL DISTRICT COURT**

**DISTRICT OF NEVADA**

DANIEL E. WOLFUS,

Plaintiff,

vs.

CASE NO.: A-17-756971-C  
DEPT NO.: 10

**FIRST AMENDED COMPLAINT FOR  
DAMAGES**

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

Defendants.

1 COMES NOW Plaintiff DANIEL E. WOLFUS ("Wolfus") by and through his  
2 counsel of record and hereby alleges, as follows:

3  
4 **PARTIES**

5 1. Plaintiff Daniel E. Wolfus ("Wolfus") is an individual who all relevant  
6 times resides or resided in Los Angeles and Ventura Counties, California. Wolfus  
7 brings this action in his own capacity and as assignee of the rights and claims of The  
8 Wolfus Revocable Trust, Christine Wolfus and Daniel Wolfus (JTWROS), Devoney  
9 Wolfus, and Stephanie Wolfus.  
10

11 2. Defendant Kenneth A. Brunk ("Brunk") is an individual who Wolfus is  
12 informed and believes and thereon alleges was and now is a resident of Colorado.  
13

14 3. Defendant Richard D. Moritz ("Moritz") is an individual who Wolfus is  
15 informed and believes and thereon alleges was and now is a resident of Colorado.  
16

17 4. Defendant Bradley J. Blacketor ("Blacketor") is an individual who  
18 Wolfus is informed and believes and thereon alleges was and now is a resident of  
19 Colorado.  
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21 5. Defendant Timothy J. Haddon ("Haddon") is an individual who Wolfus  
22 is informed and believes and thereon alleges was and now is a resident of Colorado.  
23

24 6. Defendant Martin M. Hale, Jr., ("Hale") is an individual who Wolfus is  
25 informed and believes and thereon alleges was and now is a resident of New York.  
26

27 7. Defendant Trey Anderson ("Anderson") is an individual who Wolfus is  
28 informed and believes and thereon alleges was and now is a resident of New York.

1           8.     Defendant Richard Sawchak ("Sawchak") is an individual who Wolfus is  
2 informed and believes and thereon alleges was and now is a resident of Virginia.

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4           9.     Defendant Frank Yu ("Yu") is an individual who Wolfus is informed and  
5 believes and thereon alleges was and now is a resident of Clark County, Nevada.

6           10.    Defendant John W. Sheridan ("Sheridan") is an individual who Wolfus is  
7 informed and believes and thereon alleges was and now is a resident of Vancouver,  
8 Canada.

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10          11.    Defendant Roger A. Newell ("Newell") is an individual who Wolfus is  
11 informed and believes and thereon alleges was and now is a resident of Colorado.

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13          12.    Defendant Rodney D. Knutson ("Knutson") is an individual who Wolfus  
14 is informed and believes and thereon alleges was and now is a resident of Colorado.

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16          13.    Defendant Nathaniel E. Klein ("Klein") is an individual who Wolfus is  
17 informed and believes and thereon alleges was and now is a resident of New York.

18          14.    INV-MID, LLC; EREF-MID II, LLC and HCP-MID, LLC (collectively  
19 "Hale Investors") are each Delaware limited liability companies with their principal  
20 places of business in New York

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22          15.    The true names, identities and capacities of defendants DOES 1 through  
23 25, inclusive are presently unknown to Wolfus who is informed and believes and  
24 thereon alleges that such defendants are liable to Wolfus in some manner presently  
25 undetermined as a result of the matters complained of herein. Wolfus will seek leave  
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1 of Court, if necessary, to amend this First Amended Complaint when the true names,  
2 identities and capacities of said fictitiously-named defendants are identified.

### 3 4 **JURISDICTION AND VENUE**

5 16. Among other reasons, jurisdiction and venue are proper in the District  
6 Court of Nevada, County of Clark in that Defendants, or at least one of them, at all  
7 relevant times resided in and still resides in Clark County, Nevada.  
8

### 9 **COMMON ALLEGATIONS**

10 17. Midway Gold Corp. ("Midway") is a Canadian corporation incorporated  
11 under the Company Act of British Columbia on May 14, 1996 under a prior name  
12 which was changed to its current name on July 10, 2002. Midway became a reporting  
13 issuer in the Province of British Columbia on May 16, 1997 and shortly thereafter its  
14 common shares were listed on the Vancouver Stock Exchange, the predecessor of the  
15 TSX Venture Exchange. Midway subsequently became a reporting issue in the  
16 Province of Alberta and at all relevant times, Midway was a reporting company under  
17 the Securities Exchange Act of 1934 (the "Exchange Act"). Also during all relevant  
18 times, Midway's common shares were listed on both the NYSE Amex exchange and  
19 Tier 1 of the TSX.V under the symbol. As a reporting company under the Exchange,  
20 Midway has been required to file periodic reports with the Securities and Exchange  
21 Committee (the "SEC"). Those reports are public documents which may be accessed  
22 over the internet at [https://www.sec.gov/cgi-bin/browse-](https://www.sec.gov/cgi-bin/browse-edgar?company=midway+gold&owner=exclude&action=getcompany)  
23 [edgar?company=midway+gold&owner=exclude&action=getcompany](https://www.sec.gov/cgi-bin/browse-edgar?company=midway+gold&owner=exclude&action=getcompany). This website  
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1 is commonly called Edgar. At all relevant times, Midway's principal executive offices  
2 were in Englewood, Colorado.

3  
4 18. Prior to 2008, Midway was an exploration stage company engaged in the  
5 acquisition, exploration, and, if warranted, development of gold and silver mineral  
6 properties in North America. As an exploration stage company, Midway had no  
7 revenues from operations. Instead, Midway relied on capital raised by the sale of its  
8 common shares to fund its operations.

9  
10 19. Prior to November 2008, Midway created its Disclosure Committee  
11 comprised of members of its Board of Directors. Midway reported in public filings  
12 that the purpose of the Disclosure Committee was to ensure that Midway complies  
13 with its timely disclosure obligations as required under applicable Canadian and  
14 United States securities laws. No other formal charter for this committee was ever  
15 publicly disclosed.

16  
17 20. In November 2008, Wolfus became a director of Midway. At the time,  
18 Wolfus had 28 years of experience as a banker and investment banker with substantial  
19 experience in the capital markets. As an outside director, Wolfus was appointed to  
20 several committees of the Board.

21  
22 21. In 2009, Wolfus became the Chairman of the Board and the Chief  
23 Executive Officer of Midway, serving in both capacities until May 18, 2012 when he  
24 was replaced by Brunk. As an officer of Midway, Wolfus ceased to be a member of  
25 any of the Board's committees.



1           22.    At some time prior to April 2011, Midway decided to expand its  
2 membership to include both the Chief Executive Officer and the Chief Operating  
3 Officer, at which time Wolfus again became a member of the Disclosure Committee.  
4 Brunk at all relevant times was a member of the Disclosure Committee.  
5

6           23.    Wolfus began purchasing common stock of Midway in the open market  
7 in February 2008. As of May 1, 2012, Wolfus and his assignors owned 1,629,117  
8 shares of Midway common stock. In January 2014, Wolfus and/or his assignors  
9 acquired an additional 200,000 shares of Midway common stock. In September 2014,  
10 Wolfus and/or his assignors acquired an additional 1,000,000 shares of common stock  
11 and as of December 23, 2014, and after the sale of some shares, the combined  
12 shareholdings of Wolfus and/or his assignors were 2,402,251 shares of Midway  
13 common stock. Certain of these share purchases were made directly from Midway  
14 after Wolfus ceased to be an officer or director of Midway and were made pursuant to  
15 the exercise of stock options previously granted to Wolfus.  
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20           24.    At the time Wolfus became Chairman of the Board and CEO, Midway  
21 had the following properties in the exploratory stage where gold mineralization had  
22 been identified: Spring Valley, Pan, The Midway and Golden Eagle properties.  
23 Midway's Thunder Mountain, Roberts Creek, Gold Rock (formerly the Monte) Creek  
24 and Burnt Canyon projects were then in the early stage of gold and silver exploration.  
25 Of these projects, all are in Nevada except the Golden Eagle property in Washington.  
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1           25. In October 2008, Midway entered into an exploration agreement and  
2 possible joint venture agreement with a subsidiary of Barrick Gold Corporation for its  
3 Spring Valley project. The Spring Valley project was located 20 miles northeast of  
4 Lovelock, Nevada.  
5

6           26. Of its remaining properties, Midway's Pan Gold Project ("Pan") appeared  
7 to be the most promising. The Pan Gold property was located at the northern end of  
8 the Pancake mountain range in western White Pine County, Nevada, approximately 22  
9 miles southeast of Eureka, Nevada, and 50 miles west of Ely, Nevada.  
10

11           27. Yu became a director of Midway also in November 2008 and served in  
12 that capacity at least up through June 2015. During that entire period, Yu served as a  
13 member or chairman of Midway's Disclosure Committee and Audit Committee.  
14

15           28. Newell became a Director of Midway in December of 2009 and  
16 continued in that capacity until August of 2014. During a portion of his tenure as a  
17 director, Newell served as a member of Midway's Disclosure Committee and Audit  
18 Committee.  
19

20           29. Prior to May, 2010, and based in part on substantial exploration of the  
21 Pan project, Midway made the decision to convert from a purely exploration company  
22 into a gold mining production company using the Pan project as its initial production  
23 mine.  
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25           30. In May, 2010, Brunk was hired by Midway as its President and Chief  
26 Operating Officer with the primary assignment to bring the Pan project into  
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1 production. Brunk served in that capacity until May of 2012, at which time he also  
2 became the Chairman of the Board and Chief Executive Officer of Midway, replacing  
3 Wolfus in those positions. Brunk continued as Chairman of the Board until August  
4 2014 and as Chief Executive Officer and President until December 2014. At all times  
5 Brunk was a director of Midway, he was also a member of Midway's Disclosure  
6 Committee. Midway reported in public filings that Brunk holds a degree in  
7 Metallurgical Engineering from Michigan Technological University and throughout  
8 his career had conducted numerous feasibility studies and has been responsible for  
9 designing, constructing, staffing and operating multiple mining operations and  
10 improving process efficiencies around the world as well. Brunk was initially hired by  
11 Midway to take its Pan project, discussed below, into production.  
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15 31. On July 20, 2010, Midway publically announced the results of a  
16 favorable preliminary economic assessment ("PEA") for the Pan project. The PEA  
17 included an independent audit of an updated mineral resource estimate prepared by the  
18 Midway. The PEA was prepared by Gustavson Associates, LLC ("Gustavson") and  
19 was publically available.  
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21  
22 32. Moritz was the Senior Vice President of Operations at Midway from July  
23 2010 to May 2014. Moritz was hired to primarily oversee the Pan project.  
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25 33. On February 3, 2011, Midway filed an 8-K and Press Release with the  
26 SEC in which Midway reported that it was moving forward with its Pan project with  
27 "possible production as early as 2013" and that Midway was working on a  
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1 Prefeasibility Study for the Pan project. In its Annual Report filed on Form 10-K with  
2 the SEC at the same time, Midway stated that it was "currently transitioning itself  
3 from an exploration company to a gold production company with plans to advance the  
4 Pan gold deposit located in White Pine County, Nevada through to production by as  
5 early as 2013."  
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8 34. On April 4, 2011, Midway issued a press release filed with the SEC in  
9 which it reported that it had secured a "positive Prefeasibility Study" for the Pan  
10 Project. Midway also described in significant detail the method and manner by which  
11 Midway intended to mine the gold using conventional heap leaching methods prior to  
12 which the ore would be crushed by the primary in-pit mobile jaw crusher and  
13 secondary and tertiary cone crushers to a nominal 0.5 inches. Barren solution would  
14 then be distributed on the leach pad with drip tube emitters. The entire Prefeasibility  
15 Study performed by Gustavson was filed with SEDAR and the SEC and was  
16 publically available on Edgar.  
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20 35. In a September 12, 2011 press release filed with the SEC, Midway  
21 reported its engineering team was in the process of completing a mine plan and a  
22 Feasibility Study for the Pan Project and that the environmental team was working to  
23 complete a plan of operations for the proposed mine that will be submitted to the  
24 Bureau of Land Management ("BLM") for evaluation and development of an  
25 Environmental Impact Statement.  
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1           36.    On October 6, 2011, Midway reported in a Press Release that Midway  
2 was negotiating with potential lenders to secure necessary funds for the Pan project.  
3  
4 Several major lenders had expressed interest in providing the necessary funds required  
5 for the Pan project.

6           37.    On November 1, 2011, Midway filed with the SEC a favorable Updated  
7 Mineral Resource Estimate for the Pan Project prepared by Gustavson.  
8

9           38.    On November 15, 2011, Midway reported by press release filed with the  
10 SEC the results of the Feasibility Study for the Pan project prepared by Gustavson  
11 ("Feasibility Study"). Midway stated that its mining plan would be to crush,  
12 agglomerate and place the ore on a heap leach pad with recoveries estimated to  
13 average 75%. Midway also reported that the capital costs to build the mine were  
14 estimated to be \$99 million, including \$8.2 million in working capital and \$6.8 million  
15 contingency funds with total production costs projected to be \$824/oz of gold  
16 recovered. At that time, the price of gold was ~\$1,700/oz.  
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19           39.    On December 20, 2011, Midway filed the Feasibility Study with the SEC.  
20 Excerpts of that Feasibility Study are attached hereto as Exhibit 1 and incorporated  
21 herein by this reference. Among other items, this Study provides a detailed history of  
22 the mineral exploration of the Pan project, estimated gold deposits, an extremely  
23 detailed mining plan, a budget of ~\$100 million for the project along with an  
24 extremely detailed breakdown of the needed equipment, and a projection of  
25 anticipated revenues at different levels of gold prices. Midway participated in the  
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1 creation of the Feasibility Study. The Feasibility Study was never publically updated  
2 or amended and this study formed the basis on which all necessary permits were  
3 sought.  
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5 40. In order to bring the Pan project into production, two major events  
6 needed to occur.  
7

8 A. First, Midway needed to secure necessary permits, primarily  
9 environmentally related. The most difficult of these permits was the "Record of  
10 Decision" on a Final Environmental Impact Statement processed through the BLM.  
11 Additional environmental permits were also required to be issued by the State of  
12 Nevada. No assurances could be made in 2011 that these permits would be issued but  
13 the issuance of the permits would add significant value to Midway even if Pan was not  
14 taken into production. By year-end 2011, Midway had begun the permitting process  
15 for both the BLM and the Nevada Department of Environmental Protection ("NDEP").  
16 These permits would be issued approving a specific mining plan and material changes  
17 to the plan would require modification or amendment of the environmental permits  
18 received. At all times, Midway sought these permits based upon the detailed mining  
19 plan set forth in the Feasibility Study, which required the three-stage crushing and  
20 agglomeration of the ore before it is placed on the heap leaching pad to a height not to  
21 exceed 30'. Generally, the heap leaching process required allowing a cyanide solution  
22 to percolate through the ore allowing the gold to attach to the cyanide. The resulting  
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1 gold enriched solution then would go through another process where the gold was then  
2 separated from the cyanide solution after which further processing would take place.

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4 B. The other event was that Midway would need to generate the  
5 necessary capital not only to fund the plan set forth in the Feasibility Study but also to  
6 fund Midway's other projects and general overhead. At the time, Midway believed  
7 that it would need ~\$120 million in capital to fund the foregoing up until the time that  
8 the Pan project was generating revenues. Midway was exploring raising this capital  
9 both by securing loans and through the sale of its common stock, which was the way  
10 Midway had historically raised capital.  
11  
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13 41. On January 9, 2012, Midway issued a Press Release in which it  
14 announced that it qualified as a Development Stage Entity under SEC guidelines and  
15 that it had submitted a mine plan of operations to the BLM and the NDEP. The mine  
16 plan followed the plan set forth in the Feasibility Study with capital costs of ~\$100  
17 million.  
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20 42. Sheridan became a Director of Midway in February 2012 and continued  
21 in that capacity until June 2015. During a portion of his tenure as a director, Sheridan  
22 served as a member or Chairman of Midway's Disclosure Committee and Audit  
23 Committee.  
24

25 43. Prior to May 2012, Midway was approached by Hale, who was the CEO  
26 and Portfolio Manager of Hale Capital Partners, LP who was seeking to negotiate  
27 what became a \$70 million private placement of preferred stock with investors who  
28

1 Hale would secure. At the time these negotiations commenced, Wolfus was the CEO  
2 and Chairman of the Board of Midway and was the officer primarily involved in  
3 securing capital for Midway to fund its present and future operations. Moreover,  
4 Wolfus had been spending substantial time locating sources to fund the projected costs  
5 of both the Pan project and Midway's other on-going operations. Wolfus was opposed  
6 to the transaction proposed by Hale and Brunk was an ardent supporter of the  
7 transactions.  
8

10 44. In May 2012, Midway's Board of Directors decided to terminate Wolfus  
11 as its Chairman of the Board and Chief Executive Officer and replace him with Brunk.  
12 This change of control was effective May 18, 2012, and publically reported by Brunk  
13 and Midway on May 21, 2012. Wolfus continued as a director of Midway until its  
14 next annual meeting of shareholders; and, while Wolfus also remained a member of  
15 the Disclosure Committee, he was effectively excluded from all management  
16 decisions, excluded from all negotiations involving the proposed Hale transaction,  
17 never provided with any anticipated public disclosures for review and excluded from  
18 information he would need to review to perform any Disclosure Committee duties.  
19 Wolfus did receive board packages consisting of information provided to all directors  
20 in anticipation of a quarterly Board of Directors meeting and did participate in Board  
21 of Director's meetings which occurred prior to June 2013.  
22

26 45. On August 2, 2012, the Board of Directors of Midway voted to increase  
27 the size of the Board from 5 to 6 members and appoint Klein as a director. Klein at  
28



1 the time was a Vice President of Hale Capital Partners. At the time of this  
2 appointment, Hale and Hale Capital Partners, LP were continuing to negotiate the  
3 terms of the proposed Hale transaction, which at the time had not been publically  
4 disclosed. Klein's directorship provided Hale and Hale Capital Partners, LP with  
5 access to Midway's books and records and staff.  
6

7  
8 46. By press release dated August 16, 2012, Midway and Brunk reported that  
9 engineering and permitting for the Pan project was advancing at a "rapid pace."

10 47. By press release dated September 10, 2012, Midway and Brunk reported  
11 that it was on schedule for "start-up of production in mid-2014" on the Pan project.  
12

13 48. By 8-K filed with the SEC and by Press Release also filed with the SEC  
14 and both dated November 21, 2012, Midway announced that agreements had been  
15 signed for the private placement of \$70 million in Series A Preferred Shares of  
16 Midway to the Hale Investors and generally described the terms and conditions of that  
17 sale. True and correct copies of that 8-K and Press Release are attached hereto as  
18 Exhibits 2 and 3, respectively, and incorporated hereat by this reference. Wolfus is  
19 informed and believes and thereon alleges that at all relevant times the Hale Investors  
20 were controlled by Hale. Moreover, one of the terms of the forgoing transaction was  
21 the creation of a budget and work program committee, on which Hale or another  
22 director selected solely by the Hale Investors were required members. The purpose of  
23 this committee was to review and approve Midway's annual business and financing  
24 plans and capital and operating budgets or modifications thereto and its decisions had  
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1 to be unanimous. Wolfus is informed and believes and thereon alleges that once this  
2 committee was formed, Hale and the Hale Investors acquired effective control of  
3 Midway and the Pan project.  
4

5 49. On December 13, 2012, Midway filed an 8-K and Press Release with the  
6 SEC, a true and correct copy of which is attached hereto as Exhibit 4 and incorporated  
7 hereat by this reference. Exhibit 4 reports that the Hale transaction had closed, that  
8 Hale had become a director of Midway, and that Klein had resigned as a director,  
9 although he continued to attend Board meetings thereafter. In addition, Midway  
10 reported the formation of the "Budget Work Plan Committee as alleged above with  
11 Brunk, Hale, Newell and Sheridan as its members. At all relevant times thereafter,  
12 Hale remained a director and a member of the Budget Work Plan Committee of  
13 Midway.  
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17 50. On March 22, 2013, Midway announced that a draft environmental  
18 impact statement was available for public comment. Wolfus is informed and believes  
19 and thereon alleges that this statement was based on the mining plan set forth in the  
20 Feasibility Study.  
21

22 51. On April 19, 2013, Midway issued its Definitive Proxy Statement which  
23 was filed with the SEC. This statement disclosed that the Board had not nominated  
24 Wolfus as a director but had nominated Knutson as a director and had nominated  
25 Klein as a director selected by the Hale Investors.  
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1           52. On June 20, 2013, Midway held its annual meeting of shareholders.  
2 Brunk, Hale, Newell, Sheridan, Yu, Knutson and Klein were each elected as directors.  
3  
4 Wolfus ceased to be a director at this time, although Wolfus last participation with  
5 Midway's Board ceased some time before.

6           53. On July 30, 2013, Midway issued and filed with the SEC a Press Release  
7  
8 dated July 30, 2013, a true and correct copy of which is attached hereto as Exhibit 5  
9 and incorporated herein by this reference. In that release, Midway reported that it was  
10 exploring ways to reduce costs for the Pan project, expected to issue a revised  
11 Feasibility Study in the third quarter of 2013, had made significant progress in  
12 permitting, was pursuing a combination of project and equipment financing  
13 alternatives, had received proposals from several major commercial funding sources to  
14 secure the necessary capital to fund the Pan project until a positive cash flow had been  
15 achieved, and expected to pour gold in August 2014.

16           54. On November 17, 2013, Midway issued and filed with the SEC a Press  
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18 Release dated September 17, 2013, a true and correct copy of which is attached hereto  
19 as Exhibit 6 and incorporated hereat by this reference. In this release, Midway  
20 reported that it had conducted tests of ore from South Pan and determined that it did  
21 not need to be crushed prior to leaching, and that a 92% recovery rate could be  
22 achieved after 58 days of leaching the ore at a height of 15'. This height is half of the  
23 30' height which the Feasibility Study called for. Midway stated that leaching  
24 uncrushed ore, called Run of Mine, would avoid the need to secure crushing  
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1 equipment until operations moved to other areas of the Pan project. Midway also  
2 reported that it had retained Sierra Partners to assist it in finding the necessary capital  
3 to fund operations.  
4

5 55. At year-end 2013 and in addition to Pan, Midway was moving forward  
6 with its Gold Rock project, also in White Pine County Nevada, as its second operating  
7 gold mine. Midway's Spring Valley project was also progressing primarily funded by  
8 Barrick.  
9

10 56. On December 5, 2013, Blacketor became the Chief Financial Officer and  
11 Senior Vice President of Midway. Blacketor was also a member of the Disclosure  
12 Committee  
13

14 57. On December 20, 2013, Midway issued and filed with the SEC a Press  
15 Release, a true and correct copy of which is attached hereto as Exhibit 7 and  
16 incorporated herein by this reference. In this release, Midway announced that it had  
17 received its Record of Decision for the Pan project which completes the BLM  
18 permitting process.  
19  
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21 58. As of December 31, 2013, Brunk, Hale, Newell, Sheridan, Yu, Knutson  
22 and Klein were each directors of Midway; Brunk was the Chairman, President and  
23 Chief Executive officer of Midway; Blacketor was a Senior Vice President and Chief  
24 Financial Officer of Midway; Moritz was the Senior Vice President of Operations of  
25 Midway; Brunk, Blacketor, Newell, Yu and Klein were each members of the  
26 Disclosure Committee of Midway; Sheridan, Yu and Knutson were each members of  
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1 the Audit Committee of Midway; Brunk, Hale, Sheridan, Yu and Klein were each  
2 members of the Budget/Work Plan Committee; and Newell, Sheridan and Yu were  
3 each members of the Environment, Health and Safety Committee. In those capacities,  
4 each was responsible for insuring that Midway publically disclosed all material  
5 information concerning the Pan project and that all publically disclosed information  
6 concerning the Pan project was true and complete, was not misleading and did not  
7 omitted material facts. The foregoing defendants are collectively referred to as the  
8 "2013 Control Defendants."  
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12 59. As of December 13, 2013, the 2013 Control Defendants knew each of the  
13 following facts ("2013 Undisclosed Facts") to be true, knew that each of the following  
14 facts would be material to any reasonable investor in Midway including Wolfus, and  
15 knew that none of those facts had been disclosed to the public generally or to Wolfus:  
16

17 A. Midway had been unable to raise sufficient cash either in the form  
18 of equity or debt to allow it to complete the Pan project in the manner set forth in the  
19 Feasibility Study as well as fund on-going operations until the Pan project produced  
20 sufficient revenues to cover those expenses;  
21

22 B Hale and the Hale Investors had blocked any consideration of the  
23 sale of either Midway's interest in the Spring Valley project or the Gold Rock project  
24 or any other material assets to generate additional revenues;  
25

26 C. The environmental and other permits secured by Midway for the  
27 Pan project were based upon and required Midway to conduct mining operations in  
28

1 accordance with the mining plan submitted which called for the crushing and  
2 agglomeration of ore before it was placed on the leach pads and Midway had taken no  
3 steps to cause those permits to be modified to allow Midway to proceed using Run of  
4 Mine for the South Pit of the Pan project; and

5  
6 D. Modifying the permits to permit Run of Mine would have been  
7 time consuming delaying the time when Midway could start the leaching process.  
8

9 60. On January 7, 2014, Wolfus notified Midway of his intention to exercise  
10 some of his stock options. Wolfus is informed and believes and thereon alleges that  
11 defendants and each of them were aware of this exercise. At the time Wolfus  
12 exercised these options he was not aware of any of the 2013 Undisclosed Facts, had  
13 no way of learning the 2013 undisclosed facts except from the 2013 Control  
14 Defendants, would not have exercised any of his options and would instead have sold  
15 his and his assignors' remaining Midway common shares.  
16  
17

18 61. On January 15, 2014, Midway issued and filed with the SEC a Press  
19 Release, a true and correct copy of which is attached hereto as Exhibit 8 and  
20 incorporated hereat by this reference. In that release, Midway reported that the Pan  
21 project was "fully permitted and construction is underway with completion estimated  
22 for Q3 2014."  
23  
24

25 62. Between January 7 and January 23, 2014, neither Midway nor any of the  
26 defendants provided Wolfus with any information not contained in Midway's then  
27 public filings, including the 2013 Undisclosed Facts.  
28

1           63. On January 23, 2014, Wolfus consummated his stock option exercise  
2 purchasing 200,000 shares for \$112,000 Canadian dollars which was then \$100,636  
3 US dollars.  
4

5           64. In its March 13, 2014, Annual Report on form 10-K, Midway reported  
6 that ore from the South Pan pit would be process Run of Mine and would not be  
7 crushed or agglomerated as provided in the Feasibility Study or the mining plan  
8 submitted to secure the necessary permits for the Pan project.  
9

10           65. In a Press Release issued the same day, Midway again reported that the  
11 Pan project was fully permitted and that construction was underway.  
12

13           66. On March 19, 2014, Midway announced in a Press Release that it has  
14 selected Ledcor CMI, Inc. as its mining contractor for the Pan project.  
15

16           67. On April 24, 2014, Midway issued a Press Release. But for the hand  
17 interlineations, Exhibit 9 attached hereto and incorporated hereat by this reference is a  
18 true and correct copy of that release. In that release, Midway announced its intention  
19 to reduce the capital costs for the Pan project as set forth in the Feasibility Study by  
20 using contract miners to mine the ore and by proceeding Run of Mine on the South Pit  
21 of the Pan project. Midway stated that Moritz had approved the release and that  
22 Midway was "well funded."  
23  
24

25           68. On May 16, 2014, Midway reported that Moritz had resigned.  
26

27           69. Midway's intention to use contract mining and Run of Mine was repeated  
28 in its May 21, 2014, quarterly report filed on Form 10-Q with the SEC.

1           70. On May 22, 2014, Midway issued and filed with the SEC a Press  
2 Release, a true and correct copy of which is attached hereto as Exhibit 10 and  
3 incorporated herein by this reference. This release announced the execution of a \$55  
4 million credit facility with Commonwealth Bank of Australia for the Pan project.  
5

6           71. On May 30, 2014, Midway filed with the SEC a prospectus for the sale of  
7 ~\$25 million worth of common stock in a prearranged sale. The prospectus updated  
8 an earlier registration statement. The funds were to be used in substantial part for the  
9 Pan project. Under applicable securities laws, this prospectus was required to disclose  
10 all material facts related to the Pan project, among other disclosures. However, this  
11 prospectus failed to disclose any of the 2013 Undisclosed Facts or any of the 2014  
12 Undisclosed Facts. In June 2014, Midway reported in a Press Release filed with the  
13 SEC that it completed this sale transaction.  
14  
15  
16

17           72. On June 19, 2014, Sawchak became a director of Midway and Knutson  
18 ceased to be a director of Midway. During a portion of his tenure as a director,  
19 Sawchak served as Chairman of Midway's Audit Committee.  
20

21           73. On July 21, 2014, Midway issued and filed with the SEC a Press Release  
22 announcing that it had closed on its Credit Facility from Commonwealth Bank of  
23 Australia. Wolfus is informed and believes and thereon alleges that this Credit  
24 Facility was the largest loan Midway was able to secure.  
25  
26  
27  
28



1           74. In July 2014, there was a flood at the Pan project which delayed the  
2 project. The flood was not reported until Midway's September 15, 2014, press release  
3 filed with the SEC.  
4

5           75. In its August 6, 2014, quarterly report filed on Form 10-Q with the SEC,  
6 Midway reported that it had made a 5-year contract mining deal with Ledcor and had  
7 paid a \$500,000 mobilization fee. On September 15, 2014, Midway reported in a  
8 Press Release filed with the SEC that Ledcor had in fact mobilized on site on July 21,  
9 2014. At no time did Midway disclose what control, if any, it had over the timing of  
10 Ledcor's mining operations or the control that it had over Ledcor's loading ore on the  
11 leach pads. Loading of the ore on the leach pads according to the applicable permits  
12 then effect had to be carefully monitored and supervised by qualified individuals and  
13 only after the ore had been crushed and agglomerated in the manner described in the  
14 Feasibility Study and the mining plan. Even if the ore was to be loaded on the leach  
15 pads Run of Mine, it still had to be carefully monitored and supervised by qualified  
16 individuals and only to a height not exceeding 15'. Additional ore could not be loaded  
17 on the leach pad until the approximately 2 month leaching process had occurred.  
18  
19 Wolfus was not aware of these facts until after June 2015.  
20  
21  
22  
23

24           76. By Press Release dated August 6, 2014, and filed with the SEC, Midway  
25 announced that Brunk would be leaving Midway but he remained until December  
26 2014.  
27  
28

1           77. By Press Release dated August 19, 2014 and filed with the SEC, Midway  
2 announced the "retirement" of Newell and the appointment of Haddon as Chairman of  
3 the Board, replacing Brunk in that role. Haddon also became a member of the  
4 Environment, Health and Safety Committee of Midway.  
5

6           78. As of August 31, 2013, Brunk, Hale, Sawchak, Sheridan, Yu, Haddon  
7 and Klein were each directors of Midway; Haddon was Chairman of the Board, Brunk  
8 was the President and Chief Executive officer of Midway; Blacketor was a Senior  
9 Vice President and Chief Financial Officer of Midway;; Brunk, Blacketor, Yu and  
10 Klein were each members of the Disclosure Committee of Midway; Sheridan, Yu and  
11 Sawchak were each members of the Audit Committee of Midway; Brunk, Hale,  
12 Sheridan, Yu and Klein were each members of the Budget/Work Plan Committee; and  
13 Haddon, Sheridan and Yu were each members of the Environment, Health and Safety  
14 Committee. In those capacities, each was responsible for insuring that Midway  
15 publically disclosed all material information concerning the Pan project and that all  
16 publically disclosed information concerning the Pan project was true and complete,  
17 was not misleading and did not omitted material facts. The foregoing defendants are  
18 collectively referred to as the "2014 Control Defendants."  
19  
20  
21  
22  
23

24           79. As of August 31, 2014, the 2014 Control Defendants knew each of 2013  
25 Undisclosed Facts and the following addition facts ("collectively the 2014  
26 Undisclosed Facts") to be true, knew that each of those facts would be material to any  
27  
28

1 reasonable investor in Midway including Wolfus, and knew that none of those facts  
2 had been disclosed to the public generally or to Wolfus:

3  
4 A. Ledcor was poised to commence mining operations at Pan loading  
5 ore directly on the leach pads but Midway did not have either a "qualified" person or a  
6 knowledgeable employee on site to supervise the loading of the ore on the leach pads;

7  
8 B. Midway had not sought or received modified permits to allow it to  
9 deviate from the mining plan submitted for the permits and as contained in the  
10 Feasibility Study; and

11  
12 C. Midway did not have the necessary facilities to process the gold  
13 solution once the leaching had been completed and it would be a considerable period  
14 before those facilities were constructed and permitted for operation.

15  
16 80. On September 5, 2014, Wolfus notified Midway of his intention to  
17 exercise some of his stock options. Wolfus is informed and believes and thereon  
18 alleges that defendants and each of them were aware of this exercise. At the time  
19 Wolfus exercised these options he still was not aware of any of the 2014 Undisclosed  
20 Facts, had no way of learning the 2014 Undisclosed Facts except from the 2014  
21 Control Defendants, would not have exercised any of his options had he known.

22  
23  
24 81. Between September 5 and 19, 2014, neither Midway nor any of the  
25 defendants provided Wolfus with any information not contained in Midway's then  
26 public filings, including the 2014 Undisclosed Facts.

27  
28

1           82. On September 19, 2014, Wolfus consummated his stock option exercise  
2 purchasing 1,000,000 shares for \$860,000 Canadian dollars which was then \$783,778  
3 US dollars.  
4

5           83. On September 15, 2014, Midway announced by Press Release filed with  
6 the SEC that Ledcor had commenced mining operations. The release further  
7 suggested that the facilities to process the mine would be ready by the end of  
8 September.  
9

10           84. On October 14, 2014, Midway announced that William Zisch would  
11 become President and Chief Executive Officer of Midway on or about December 10,  
12 2014 and that Brunk would depart Midway on Mr. Zisch's start date.  
13

14           85. By Current Report filed on form 8-K with the SEC and dated November  
15 4, 2014, Midway announced the resignation of Klein and the appointment of  
16 Anderson as a director by the Hale Investors. Anderson also became a member of the  
17 Budget/Work Plan Committee of Midway.  
18

19           86. In its November 16, 2014, quarterly report on Form 10-Q filed with the  
20 SEC, Midway again provided only favorable information concerning the Pan project.  
21

22           87. By Press Release dated December 1, 2014 and filed with the SEC,  
23 Midway reported that it had begun receiving funds on its Credit Facility.  
24

25           88. On June 22, 2015, Midway announced that it was filing a voluntary  
26 petition for relief under Chapter 11 of the Bankruptcy Code.  
27  
28

1           89. As a result of the Midway Bankruptcy, all or virtually all of Midway's  
2 assets have been sold and there will be no funds or recoveries by common  
3 shareholders of Midway.  
4

5           90. Following the bankruptcy filing, Wolfus has learned or is otherwise  
6 informed and believed and thereon alleges that the following facts are true:  
7

8           A. As of the end of 2013, Midway lacked sufficient resources in the  
9 form of capital or debt financing to bring the Pan project to a successful mining  
10 operation;  
11

12           B. Hale and the Hale Investors blocked Midway from selling assets to  
13 create necessary capital;  
14

15           C. In late 2013 or early 2014, material disagreements arose between  
16 Brunk and Hale, which resulted in Hale taking effective control of Midway and the  
17 Pan project even though Hale lacked the ability to manage the Pan project;  
18

19           D. The ore in the entire Pan project was extremely clayey and would  
20 need to be crushed and agglomerated prior to leaching in order to profitable and timely  
21 extract gold; but rather than cut other costs so that the crushing and agglomeration  
22 equipment could be acquired, defendants, and each of them, decided not to purchase  
23 this necessary equipment;  
24

25           E. Costly equipment was purchased by Midway which was not  
26 permitted to be used on the Pan project resulting in costly delays;  
27  
28

1 F. Midway never received the appropriate permits for Run of Mine  
2 operations;

3  
4 G. Midway allowed Ledcor to overload the leach pads in a manner  
5 which violated its operating permits and resulted in an inability to successfully leach  
6 the gold from the ore;

7  
8 H. Midway allowed Ledcor to begin loading the leach pads before it  
9 was capable of either performing the necessary heap leaching or capable of processing  
10 and refining for sale the resulting gold solution.

11  
12 91. Effective June 2, 2016, Wolfus, Brunk, Moritz, Blacketer, Haddon, Hale,  
13 Anderson, Sawchak, Yu, Sheridan, Newell, Knutson and Klein entered into a tolling  
14 agreement, a true and correct copy of which is attached hereto as Exhibit 11 and  
15 incorporated herein by this reference. This agreement tolled the statute of limitations  
16 on all claims from June 2, 2016 through September 25, 2016.

17  
18 **FIRST CAUSE OF ACTION**

19  
20 **(SECURITIES FRAUD AGAINST**

21 **THE 2013 AND 2014 CONTROL DEFENDANTS)**

22 92. Wolfus realleges the allegations contained in Paragraphs 1 through 91 as  
23 though fully set forth hereat.

24  
25 93. This is a claim for securities fraud based upon the California Corporate  
26 Securities Law of 1968, *California Corporations Code* § 25000, *et seq.* (the "Act")  
27  
28

1           94. At all relevant times, Wolfus was and now is a resident of California. All  
2 purchases of Midway's common stock were made by Wolfus either for his own  
3 account or for his assignors. All purchases of Midway's common stock were made by  
4 Wolfus in California.  
5

6           95. Midway's common shares are securities as defined in California  
7  
8 *Corporations Code* § 25019.

9           96. As of October 8, 2013, Wolfus or his assignors owned 1,609,117 shares  
10 of Midway's common stock.  
11

12           97. On January 23, 2014, Wolfus purchased in California 200,000 shares of  
13 Midway's common stock directly from Midway through the exercise of stock options  
14 at a purchase price of \$.56 Canadian dollars per share or approximately \$.50 US  
15 dollars per share. At that time, Midway's common stock was selling on the NYSE  
16 Amex exchange at \$1.27 US dollars per share and its price was rising reaching nearly  
17 \$1.50 US dollars per share within the next 30 days.  
18

19           98. Midway was the issuer of the 200,000 shares purchased by Wolfus and as  
20 such was liable for any written or oral communication contained in its public filings  
21 that included any untrue statement of a material fact or omits to state a material fact  
22 necessary to make the statements made, in light of the circumstances under which the  
23 statements were made, not misleading.  
24

25           99. Each of the 2013 Control Defendants are jointly and severally liable to  
26 Wolfus with Midway because of their positions as officers, directors and committee  
27  
28

1 members of Midway and as such are deemed to be "controlling persons" under the  
2 Act. Moreover, each of the 2013 Control Defendants controlled Midway and had the  
3 ability and duty to ensure that its public filings were true, correct and complete, were  
4 not misleading and did not fail to disclose material facts.  
5

6         100. In violation of California *Corporations Code* § 25401, the 2013 public  
7 filings by Midway which discussed the Pan project were materially false and  
8 misleading by failing to timely disclose each of the 2013 Undisclosed Facts and the  
9 failure by the 2013 Control Defendants to disclose the 2013 Undisclosed Facts was  
10 intentional and was done to encourage investors to retain and purchase Midway's  
11 common stock.  
12

13  
14         101. In exercising his options in January 2014, Wolfus relied on the public  
15 filings of Midway and was unaware of the 2013 Undisclosed Facts. Had Wolfus  
16 known any of the 2013 Undisclosed Facts, Wolfus would not have exercised any  
17 options in January 2014 or thereafter and would have sold both his and his assignors  
18 common stock when the stock reached its peak in February 2014.  
19  
20

21         102. On September 19, 2014, Wolfus purchased in California 1,000,000 shares  
22 of Midway's common stock directly from Midway through the exercise of stock  
23 options at a purchase price of \$.86 Canadian dollars per share, which was  
24 approximately \$.78 US dollars per share. At that time, Midway's common stock was  
25 selling on the NYSE Amex exchange at \$1.03 per share and its price was rising  
26 reaching nearly \$1.20 per share within the next 30 days.  
27  
28



1           103. Midway was the issuer of the 1,000,000 shares purchased by Wolfus and  
2 as such was liable for any written or oral communication contained in its public  
3 filings that included any untrue statement of a material fact or omits to state a  
4 material fact necessary to make the statements made, in light of the circumstances  
5 under which the statements were made, not misleading.  
6

7           104. Each of the 2014 Control Defendants are jointly and severally liable to  
8 Wolfus with Midway because of their positions as officers, directors and committee  
9 members of Midway and as such are deemed to be "controlling persons" under the  
10 Act. Moreover, each of the 2014 Control Defendants controlled Midway and had the  
11 ability and duty to ensure that its public filings were true, correct and complete, were  
12 not misleading and did not fail to disclose material facts.  
13

14           105. In violation of California *Corporations Code* § 25401, the pre-September  
15 2014 public filings by Midway which discussed the Pan project were materially false  
16 and misleading by failing to timely disclose each of the 2014 Undisclosed Facts and  
17 the failure by the 2014 Control Defendants to disclose the 2014 Undisclosed Facts  
18 was intentional and was done to encourage investors to retain and purchase Midway's  
19 common stock.  
20

21           106. In exercising his options in September 2014, Wolfus relied on the public  
22 filings of Midway and was unaware of the 2014 Undisclosed Facts. Had Wolfus  
23 known any of the 2014 Undisclosed Facts, Wolfus would not have exercised any  
24  
25  
26  
27  
28

1 options in September 2014 and would have sold both his and his assignors remaining  
2 common stock when the stock reached its peak in October 2014.

3  
4 107. All of the common stock owned by Wolfus and his assignors has become  
5 valueless except to the extent sold after January 23, 2014.

6 108. As a result of misrepresentations and omissions of material facts, Wolfus  
7 has been damaged in an amount to be proven at trial, but no event less than  
8 \$3,000,000. Wolfus is entitled to interest at 10% per annum and reasonable attorney  
9 fees.  
10

11  
12 **SECOND CAUSE OF ACTION**

13 **(BREACH OF FIDUCIARY DUTY**

14 **AGAINST THE 2013 AND 2014 CONTROL DEFENDANTS)**

15  
16 109. Wolfus realleges the allegations contained in Paragraphs 1 through 91,  
17 94, 96, 97, 101, 102, 106 and 107 as though fully set forth hereat.

18 110. This is a claim for breach of fiduciary duty against the 2013 Control  
19 Defendants arising out of their failure to disclose the 2013 Undisclosed Facts prior to  
20 Wolfus stock option exercise in January 2014 and against the 2014 Control  
21 Defendants for their failure to disclose the 2013 Undisclosed Facts and the 2014  
22 Undisclosed Facts prior to Wolfus stock option exercise in September 2014.  
23

24 111. Each of the 2013 Control Defendants and 2014 Control Defendants were  
25 fiduciaries and owed Wolfus the fiduciary duty of full disclosure of all material facts  
26 then existing prior to Wolfus' exercise of his stock options in 2014.  
27  
28

1           112. Each of the 2013 Control Defendants and 2014 Control Defendants  
2 breached their fiduciary duties to Wolfus by failing to disclose the 2013 Undisclosed  
3 Facts prior to January 1, 2014 and by failing to disclose the 2014 Undisclosed Facts  
4 prior to September 2014.  
5

6  
7           113. As a result of defendants' breach of their fiduciary duties to Wolfus,  
8 Wolfus has been damaged in an amount to be proven at trial, but no event less than  
9 \$3,000,000. Wolfus is entitled to interest at 10% per annum.  
10

11           114. Defendants conduct was fraudulent entitling Wolfus to an award of  
12 punitive damages in an amount to be proven at trial.  
13

14                           **THIRD CAUSE OF ACTION**

15                   **(AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY**  
16                   **AGAINST ALL DEFENDANTS)**

17  
18           115. Wolfus realleges the allegations contained in Paragraphs 1 through 91,  
19 94, 96, 97, 101, 102, 106, 107 and 114 as though fully set forth hereat.

20           116. This is a claim for aiding and abetting Midway in breaching its fiduciary  
21 duties of full disclosure of all material facts then existing related to the Pan project  
22 prior to Wolfus' exercise of his stock options in 2014.  
23

24           117. Wolfus is informed and believes and thereon alleges that Does 1 through  
25 2 are the underlying beneficial owners of the Hale Investors and as such indirectly  
26 through Hale controlled the Pan project and Midway at all times from and after June  
27 2013.  
28

1 118. Midway at all times after Wolfus ceased to be a member of Midway's  
2 Board of Directors owed Wolfus of full disclosure of all relevant facts related to the  
3 Pan project prior to selling 1,200,000 shares of Midway's common stock. to Wolfus  
4 in 2014.  
5

6 119. Midway breached its fiduciary duties to Wolfus in 2014 by failing to  
7 disclose the 2013 Undisclosed Facts prior to January 2014 and by failing to disclose  
8 the 2014 Undisclosed Facts prior to September 2014.  
9

10 120. Defendants, and each of them, knew of Midway's fiduciary duties to  
11 Wolfus and materially aided and abetted Midway in breaching its fiduciary duties.  
12

13 121. Wolfus has been damaged in an amount to be proven at trial, but no event  
14 less than \$3,000,000. Wolfus is entitled to interest at 10% per annum.  
15

16 **FOURTH CAUSE OF ACTION**

17 **(FRAUD AGAINST THE 2013 AND 2014 CONTROL DEFENDANTS)**

18 122. Wolfus realleges the allegations contained in Paragraphs 1 through 91,  
19 94, 96, 97, 101, 102, 106, 107 and 114 as though fully set forth hereat.  
20

21 123. This is a claim for common law fraud for failing to disclose the 2013  
22 Undisclosed Facts and the 2014 Undisclosed Facts related to the Pan project prior to  
23 Wolfus' exercise of his stock options in 2014.  
24

25 124. The 2013 Control Defendants intentionally defrauded Wolfus by failing  
26 to disclose or causing Midway to disclose the 2013 Undisclosed Facts.  
27  
28

1 125. The 2014 Control Defendants intentionally defrauded Wolfus by failing  
2 to disclose or causing Midway to disclose the 2014 Undisclosed Facts.

3  
4 126. Wolfus was ignorant of the 2013 Undisclosed Facts in January 2014, had  
5 no ability to learn the 2013 Undisclosed Facts prior to January 2014, and relied upon  
6 the absence of any disclosure of the 2013 Undisclosed Facts in exercising his stock  
7 options in January 2014 and in not selling all of his and his assignors' shares of  
8 Midway common stock prior to March, 2014.

9  
10 127. Wolfus was ignorant of the 2013 Undisclosed Facts and the 2014  
11 Undisclosed Facts in September 2014, had no ability to learn any of those facts prior  
12 to September 2014, and relied upon the absence of any of any disclosure of those  
13 facts in exercising his stock options in September 2014 and in not selling all of his  
14 and his assignors' shares of Midway common stock prior to November, 2014.

15  
16  
17 128. Wolfus first learned of the 2013 Undisclosed Facts and the 2014  
18 Undisclosed Facts after June 2015.

19  
20 129. Wolfus has been damaged in an amount to be proven at trial, but no event  
21 less than \$3,000,000. Wolfus is entitled to interest at 10% per annum.

22 **FOURTH CAUSE OF ACTION**

23 **(NEGLIGENT MISREPRESENTATION**

24 **AGAINST THE 2013 AND 2014 CONTROL DEFENDANTS)**

25  
26 130. Wolfus realleges the allegations contained in Paragraphs 1 through 91,  
27 94, 96, 97, 101, 102, 106, 107 and 114 as though fully set forth hereat.  
28

1           131. This is a claim for common law negligent misrepresentation for  
2 negligently failing to disclose the 2013 Undisclosed Facts and the 2014 Undisclosed  
3 Facts related to the Pan project prior to Wolfus' exercise of his stock options in 2014.  
4

5           132. The 2013 Control Defendants negligently failed to disclose or cause  
6 Midway to disclose the 2013 Undisclosed Facts to Wolfus prior to his exercise of  
7 stock options in January 2014.  
8

9           133. The 2014 Control Defendants negligently failed to disclose or cause  
10 Midway to disclose the 2014 Undisclosed Facts to Wolfus prior to his exercise of  
11 stock options in September 2014.  
12

13           134. Because of their status, the 2013 Control Defendants and the 2014  
14 Control Defendants owed Wolfus a duty of full disclosure of all relevant facts related  
15 to the Pan project prior to causing or allowing Midway to sell common stock to  
16 Wolfus.  
17

18           135. Wolfus was ignorant of the 2013 Undisclosed Facts in January 2014, had  
19 no ability to learn the 2013 Undisclosed Facts prior to January 2014, and relied upon  
20 the absence of any disclosure of the 2013 Undisclosed Facts in exercising his stock  
21 options in January 2014 and in not selling all of his and his assignors' shares of  
22 Midway common stock prior to March, 2014.  
23

24           136. Wolfus was ignorant of the 2013 Undisclosed Facts and the 2014  
25 Undisclosed Facts in September 2014, had no ability to learn any of those facts prior  
26 to September 2014, and relied upon the absence of any of any disclosure of those  
27  
28

1 facts in exercising his stock options in September 2014 and in not selling all of his  
2 and his assignors' shares of Midway common stock prior to November, 2014.

3  
4 137. Wolfus first learned of the 2013 Undisclosed Facts and the 2014  
5 Undisclosed Facts after June 2015.

6 138. Wolfus has been damaged in an amount to be proven at trial, but no event  
7  
8 less than \$3,000,000. Wolfus is entitled to interest at 10% per annum.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Wolfus prays judgment against Defendants, as follows:

- 11  
12 1. For damages in excess of \$15,000.00, according to proof;  
13 2. For interest thereon at 10% per annum;  
14 3. For attorneys' fees;  
15 4. For costs of suit; and  
16 5. For such other and further relief as the Court deems just and proper.

17  
18 Dated this 29<sup>th</sup> day of June, 2017.

19  
20  
21   
22 James R. Christensen Esq.  
23 Nevada Bar No. 3861  
24 James R. Christensen PC  
25 630 S. Third St.  
26 Las Vegas NV 89101  
27 (702) 272-0406  
28 (702) 272-0415 fax  
jim@jchristensenlaw.com  
Attorney for Plaintiff

# EXHIBIT 1



**NI 43-101 TECHNICAL REPORT**  
**Feasibility Study**  
**for the**  
**PAN GOLD PROJECT**  
**White Pine County, Nevada**

**PREPARED FOR MIDWAY GOLD CORP.**



**Effective date: November 15, 2011**

**Signature date: December 19, 2011**

**Prepared by**  
**William J. Crowl, R.G. QP MMSA**  
**Donald E. Hulse, P.E.**  
**Terre A. Lane, QP MMSA**  
**Donald J. Baker, PhD QP MMSA**  
**Jennifer J. Brown, P.G. Registered Member SME**



**GUSTAVSON ASSOCIATES**  
**GEOLOGISTS • ENGINEERS • ECONOMISTS • APPRAISERS**

## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
<b>1 SUMMARY</b>	<b>1</b>
1.1 INTRODUCTION	1
1.2 PROPERTY DESCRIPTION AND OWNERSHIP	1
1.3 GEOLOGY AND MINERALIZATION	1
1.4 CONCEPT AND STATUS OF EXPLORATION	2
1.5 MINERAL RESOURCE ESTIMATE	2
1.5.1 North Pan	3
1.5.2 Central and South Pan	3
1.6 MINERAL RESERVE ESTIMATE	6
1.6.1 Whittle Optimization	6
1.6.2 Calculation Parameters	6
1.6.3 Cutoff Grade Equations	7
1.6.4 Mineral Reserve Estimate	7
1.7 CONCLUSIONS AND RECOMMENDATIONS	9
<b>2 INTRODUCTION</b>	<b>10</b>
2.1 PURPOSE	10
2.2 QUALIFIED PERSONS	10
2.3 SITE VISIT OF QUALIFIED PERSON	10
2.4 SOURCES OF INFORMATION	11
2.5 UNITS OF MEASURE	11
<b>3 RELIANCE ON OTHER EXPERTS</b>	<b>12</b>
<b>4 PROPERTY DESCRIPTION AND LOCATION</b>	<b>13</b>
4.1 LOCATION	13
4.2 MINERAL TENURE, AGREEMENTS, AND EXPLORATION PERMITS	14
4.2.1 Mineral Rights	14
4.2.1.1 Newark Valley Mining Agreement	15
4.2.1.2 Additional Claims	16
4.3 ENVIRONMENTAL LIABILITIES	16
4.4 EXPLORATION PERMITS AND JURISDICTIONS	17
<b>5 ACCESSIBILITY, CLIMATE, LOCAL RESOURCES, INFRASTRUCTURE, AND PHYSIOGRAPHY</b>	<b>19</b>
5.1 ACCESSIBILITY, INFRASTRUCTURE, AND LOCAL RESOURCES	19
5.2 TOPOGRAPHY, ELEVATION, VEGETATION, AND CLIMATE	19
<b>6 HISTORY</b>	<b>21</b>
6.1 EXPLORATION HISTORY	21
6.2 HISTORICAL RESOURCE AND RESERVE ESTIMATES	22
<b>7 GEOLOGICAL SETTING AND MINERALIZATION</b>	<b>23</b>
7.1 REGIONAL GEOLOGY	23
7.2 PROPERTY GEOLOGY	26

7.2.1	<i>Lithological Units</i>	26
7.2.1.1	Simonson Dolomite (Ds) - Devonian	26
7.2.1.2	Devils Gate Limestone (Dd) - Late Devonian	26
7.2.1.3	Pilot Shale (MDp) - Late Devonian to Early Mississippian	26
7.2.1.4	Joana Limestone (MJ) - Mississippian	26
7.2.1.5	Chairman Shale (Mc) - Mississippian	27
7.2.1.6	Diamond Peak Formation (MD) - Mississippian	27
7.2.1.7	Ely Limestone (Pe) - Pennsylvanian	27
7.2.1.8	Rib Hill Siltstone - Permian	27
7.2.1.9	Kaibab Limestone - Permian	27
7.2.1.10	Intrusives - Cretaceous	27
7.2.1.11	Volcanic Units (Tv) - Tertiary	28
7.2.2	<i>Structural Geology</i>	28
7.3	<b>MINERALIZATION</b>	28
7.3.1	<i>Alteration</i>	29
7.3.2	<i>Geometry of Mineralization</i>	30
8	<b>DEPOSIT TYPES</b>	33
9	<b>EXPLORATION</b>	34
9.1	<b>PREVIOUS OPERATORS EXPLORATION WORK</b>	34
9.2	<b>MIDWAY EXPLORATION WORK</b>	34
9.2.1	<i>Surface Geochemistry</i>	34
9.2.2	<i>Rock Samples</i>	34
9.2.3	<i>Geologic Mapping</i>	35
9.2.4	<i>Geophysical Surveys</i>	35
10	<b>DRILLING</b>	36
10.1	<b>INTRODUCTION</b>	36
10.2	<b>DRILLING BY MIDWAY GOLD CORP.</b>	36
10.2.1	<i>Drilling Procedures and Conditions</i>	39
10.2.2	<i>Drill hole Collar Surveys</i>	39
10.2.3	<i>Down hole Surveys</i>	39
10.2.4	<i>Extent of Drilling</i>	40
10.2.5	<i>MIDWAY Data Compilation and Grid Conversion</i>	40
10.3	<b>SAMPLING METHOD AND APPROACH</b>	40
11	<b>SAMPLE PREPARATION, ANALYSES, AND SECURITY</b>	42
11.1	<b>SAMPLE PREPARATION AND ANALYSE PROCEDURES</b>	42
12	<b>DATA VERIFICATION</b>	43
12.1	<b>CHECK ASSAYS</b>	43
12.2	<b>MIDWAY GOLD CORP. QA/QC PROGRAMS</b>	45
12.3	<b>TWIN HOLE STUDY</b>	46
13	<b>MINERAL PROCESSING AND METALLURGICAL TESTING</b>	49
13.1	<b>ORE SAMPLING AND TEST WORK</b>	49
13.2	<b>ONGOING METALLURGICAL TEST WORK</b>	49
13.2.1	<i>Head Assays</i>	50
13.2.2	<i>XRF Analyses</i>	51

13.2.3	XRD Analysis	52
13.2.4	ICP Analysis	52
13.2.5	Crushability Work and Abrasion Index	55
13.2.6	Static Bucket Leach Tests for Surface Samples	56
13.2.7	Bottle Roll Leach Tests	57
13.2.8	Column Leach Tests	60
13.2.8.1	Assay-by-Size Fraction for Gold	60
13.2.8.2	Test Results	62
13.2.8.3	Percent Slump	64
13.2.8.4	Drain Down and Maximum Percolation Rate	64
13.2.8.5	Tailing Analysis	65
13.2.8.6	Pregnant Solution Analysis	65
13.2.9	Coarse Ore Bottle Roll Leach Tests on North Pan Samples	68
13.2.10	Agglomeration Tests	68
13.2.11	Carbon Loading Tests	69
13.2.12	Metallurgical Testing Conclusions	70
14	MINERAL RESOURCE ESTIMATES	71
14.1	DATA USED FOR THE GOLD GRADE ESTIMATION	71
14.2	DENSITY	71
14.3	METHODOLOGY	72
14.4	ESTIMATION DOMAINS	73
14.4.1	Creation of Domains	73
14.4.1.1	North Pan	73
14.4.1.2	Central Pan	75
14.4.1.3	South Pan	75
14.4.2	Grade Shell Estimation	77
14.4.2.1	North Pan	77
14.4.2.2	Central and South Pan	77
14.5	COMPOSITING	79
14.6	CAPPING OF ASSAYS	79
14.7	VARIOGRAPHY	80
14.8	ESTIMATION METHODOLOGY	82
14.8.1	North Pan	82
14.8.2	Central and South Pan	82
14.9	ESTIMATE VALIDATION	84
14.10	MINERAL RESOURCE CLASSIFICATION	86
14.11	MINERAL RESOURCE TABULATION	86
15	MINERAL RESERVE ESTIMATES	89
15.1.1	Whittle Pit Optimization	89
15.1.2	Calculation Parameters	89
15.1.2.1	Cutoff Grade Equations	89
15.1.3	Mineral Reserve Estimate	90
16	MINING METHODS	93
16.1	OPEN PIT MINE PLAN	93
16.1.1	Pit Design	95
16.1.1.1	Geotechnical Pit Slope Evaluation	98

16.1.3	Waste Dumps	100
16.1.3	Annual Mine Plans	100
16.1.4	Geotechnical Design- Heap Leach Pad, Ponds, Stormwater Diversions	109
16.1.5	Site Scale Hydrology	109
16.1.5.1	Deep Bedrock Aquifer	111
16.1.5.2	Water Quality	113
16.1.5.3	Alluvial Aquifer	113
16.1.6	Mining Equipment	115
16.1.7	Support Equipment	115
16.2	PREPRODUCTION DEVELOPMENT	116
16.3	PRODUCTION SCHEDULE	116
16.3.1	Pit Design Schedule Sequence	117
16.3.2	Production Schedule Parameters	118
16.3.3	Drill and Blast Parameters	119
16.3.4	Load and Haul Parameters	120
17	RECOVERY METHODS	121
17.1.1	Process Description	122
17.1.2	Production Rate and Products	122
17.1.3	Primary Crushing	124
17.1.4	Secondary Crushing	126
17.1.5	Agglomeration	128
17.1.6	Conveying and Stacking	130
17.1.7	Heap Leach	132
17.1.8	ADR Gold Recovery Plant	132
18	PROJECT INFRASTRUCTURE	135
18.1	FACILITIES	135
18.1.1	Office Building	135
18.1.2	Warehouse and Laboratory	135
18.1.3	Truck Shop & Maintenance	135
18.1.4	Guard House	135
18.1.5	Process Building	135
18.2	ROADS	140
18.3	SECURITY	140
18.4	SEPTIC SYSTEMS	140
18.5	WATER	140
18.6	POWER	141
18.7	FUEL DEPOT	143
18.8	COMMUNICATIONS	143
19	MARKET STUDIES AND CONTRACTS	144
20	ENVIRONMENTAL STUDIES, PERMITTING AND SOCIAL OR COMMUNITY IMPACT	145
20.1	PERMITS REQUIRED	145
21	CAPITAL AND OPERATING COSTS	148
21.1	CAPITAL COST ESTIMATE	148
21.1.1	Basic	143
21.1.2	Mine Development	143

21.1.3	Mine Equipment	149
21.1.4	Mine Buildings	149
21.1.5	Facilities and Infrastructure	150
21.1.6	Primary Crushing and Coarse Ore Storage	152
21.1.7	Secondary Crushing, Agglomeration and Stacking	153
21.1.8	Leaching	155
21.1.9	Process Ponds	155
21.1.10	Storm Water Diversion	156
21.1.11	Gold Recovery	156
21.1.12	Owner's Costs	158
21.1.13	EPCM	159
21.1.14	Working Capital	159
21.1.15	Sustaining Capital	160
21.1.16	Contingency	161
21.2	OPERATING COST ESTIMATE	162
21.2.1	Project Cost and Basis	162
21.2.2	Project Manpower	164
21.2.3	Mine Operating Costs	167
21.2.4	Mine Equipment Costs	168
21.2.5	Mine Operating Cost Statistics	168
21.2.6	Plant Operating Costs	169
21.2.7	Plant Equipment Costs	170
21.2.8	Plant Operating Cost Statistics	171
21.2.9	General and Administration Costs	171
21.2.10	General and Administration Cost Statistics	172
21.2.11	Insurance	172
21.2.12	Net Proceeds of Mines/Property Tax	172
21.2.13	Contingency	173
21.2.14	Income Tax	173
22	ECONOMIC ANALYSIS	174
22.1	FINANCIAL ANALYSIS	174
22.2	COMMODITY PRICE(S)	174
22.3	ROYALTIES AND TAXES	174
22.4	CASH FLOW ANALYSIS	174
22.5	ECONOMIC PROJECTION	175
22.6	SENSITIVITY ANALYSIS	175
22.6.1	Price	175
22.6.2	Operating Cost, Capital Cost and Gold Grade	176
23	ADJACENT PROPERTIES	178
24	OTHER RELEVANT DATA AND INFORMATION	179
25	INTERPRETATION AND CONCLUSIONS	180
26	RECOMMENDATIONS	181
27	REFERENCES	182

## LIST OF FIGURES

<u>Figure</u>	<u>Page</u>
Figure 4-1 Property Location	13
Figure 4-2 Claim Boundary	14
Figure 7-1 Regional Geology, Pancake Range Local Geology	24
Figure 7-2 Pan Stratigraphy	25
Figure 7-3 East-West Section across North Pan, Looking North	31
Figure 7-4 East-West Section across South Pan, Looking North	32
Figure 10-1 Pan Project MIDWAY Drill Hole Distribution	38
Figure 12-1 MIDWAY Rig Duplicates	44
Figure 12-2 Grade vs. Depth Comparison 1	47
Figure 12-3 Grade vs. Depth Comparison 2	48
Figure 14-1 Estimation Domains	74
Figure 14-2 South and Central Pan Grade Shell, at Bench 6600	76
Figure 14-3 A Spherical Variogram for the Major Axis the South Pan Breccia Domain	81
Figure 14-4 Block Model Gold Content of Bench Elevation 6600	85
Figure 16-1 General Site Layout	94
Figure 16-2 Final Pit, Heap and Waste Dumps	97
Figure 16-3 Mine Plan – Year 1	101
Figure 16-4 Mine Plan – Year 2	102
Figure 16-5 Mine Plan – Year 3	103
Figure 16-6 Mine Plan – Year 4	104
Figure 16-7 Mine Plan – Year 5	105
Figure 16-8 Mine Plan – Year 6	106
Figure 16-9 Mine Plan – Year 7	107
Figure 16-10 Mine Plan – Year 8	108
Figure 16-11 Conceptual Cross Section of the Pan Project Proposed Mine Area	110
Figure 16-12 Deep Borehole Locations	112
Figure 16-13 Existing Wells in Alluvial Aquifer	114
Figure 17-1 General Process Flow	123
Figure 17-2 Primary Jaw Crusher	125
Figure 17-3 Secondary and Tertiary Crushing	127
Figure 17-4 Agglomerator	129
Figure 17-5 Teletacker	131
Figure 17-6 ADR Processing Facility General Arrangement	133
Figure 18-1 Office Building	136
Figure 18-2 Lab and Warehouse Facility	137
Figure 18-3 Truck and Maintenance Shop	138
Figure 18-4 Guard House	139
Figure 18-5 Powerline Alignment	142
Figure 21-1 Contingency Calculation	161
Figure 22-1 Gold Price Sensitivity	176
Figure 22-2 Economic Sensitivities	177

## LIST OF TABLES

<u>Table</u>	<u>Page</u>
Table 1-1 North Pan Mineral Resource .....	4
Table 1-2 Central Pan Mineral Resource .....	4
Table 1-3 South Pan Mineral Resource .....	5
Table 1-4 Total Pan Mineral Resource .....	5
Table 1-5 Pan Project Mineral Reserves Estimate .....	7
Table 4-1 Pan Royalty Schedule .....	15
Table 10-1 Midway Drilling Exploration Summary .....	36
Table 10-2 2011 Drill Hole Summary .....	37
Table 11-1 Drill Data by Analytical Method .....	42
Table 12-1 Descriptive Statistics of MIDWAY Duplicate Rig Samples .....	45
Table 13-1 Lithology of Composite Samples .....	49
Table 13-2 Head Analyses of Composite Samples .....	50
Table 13-3 XRF Analyses .....	51
Table 13-4 XRD Test Results .....	52
Table 13-5 ICP Analyses of Composite Samples .....	53
Table 13-6 Crashability and Abrasion Test Results .....	56
Table 13-7 Static Bucket Leach Test Results .....	57
Table 13-8 Bottle Roll Cyanidation Test Results – Composite Sample, 6-mesh .....	58
Table 13-9 Bottle Roll Cyanidation Test Results – Composite Sample, 200-mesh .....	59
Table 13-10 Assay-by-Size Fraction Data .....	61
Table 13-11 Summary of Column Leach Test Results for North Pan Samples .....	62
Table 13-12 Summary of Column Leach Test Results for South Pan Samples .....	63
Table 13-13 Percolation Test Results .....	64
Table 13-14 Residue Assay-by-Size Data .....	65
Table 13-15 A and B, Pregnant Solution Analyses .....	66
Table 13-16 Bottle Roll Cyanide Leach Test Results .....	68
Table 13-17 Agglomeration Test Results .....	69
Table 14-1 Core Sample Density Test Results .....	72
Table 14-2 Pan Project Raw Assay Summary Statistics $\text{Au} \geq 0.001 \text{ opt}$ .....	78
Table 14-3 Domain Composite Data .....	79
Table 14-4 Pan Variogram Parameters .....	81
Table 14-5 Pan Estimation Parameters .....	83
Table 14-6 Pan Estimation Parameters .....	83
Table 14-7 Pan Estimation Parameters .....	83
Table 14-8 North Pan Mineral Resource .....	86
Table 14-9 Central Pan Mineral Resource .....	87
Table 14-10 South Pan Mineral Resource .....	87



Table 14-11 Total Pan Mineral Resource.....	83
Table 15-1 Calculated Cutoffs.....	90
Table 15-2 North and Central Pan Mineral Reserves.....	91
Table 15-3 South Pan and Total Pan Project Mineral Reserves.....	92
Table 16-1 Pit Design Criteria.....	95
Table 16-2 Slope Design Recommendations.....	99
Table 16-3 Initial Mine Equipment.....	115
Table 16-4 Additional Mine Equipment.....	115
Table 16-5 Mine Support Equipment.....	116
Table 16-6 Pan Project Mine Development.....	116
Table 16-7 Yearly Production Schedule.....	117
Table 16-8 Leach Pad Construction Materials.....	118
Table 16-9 Production Schedule by Pit Design.....	118
Table 16-10 Mine Schedule Parameters.....	119
Table 16-11 Equipment Availabilities/Utilization.....	119
Table 16-12 Drill and Blast Parameters.....	120
Table 16-13 Load and Haul Parameters.....	121
Table 17-1 Estimated Reagent Consumption.....	130
Table 17-2 ADR Plant Equipment List.....	134
Table 18-1 Maximum Water Usage.....	141
Table 18-2 Pan Project Estimated Electrical Load.....	143
Table 20-1 Major Permits and Authorizations Required for Project Development.....	145
Table 21-1 Pan Project Capital Cost Estimate.....	148
Table 21-2 Pan Project Mine Development.....	149
Table 21-3 Mine Mobile Equipment.....	149
Table 21-4 Mine Buildings.....	150
Table 21-5 Pan Project Infrastructure, Facilities, and Buildings.....	152
Table 21-6 Primary Crushing and Material Handling.....	153
Table 21-7 Secondary Crushing and Stacking.....	154
Table 21-8 Secondary Tertiary Crusher.....	155
Table 21-9 Leach Pad Cost Estimate.....	155
Table 21-10 Process Pond Cost Estimate.....	156
Table 21-11 Storm Water Diversions.....	156
Table 21-12 Gold Recovery Process.....	157
Table 21-13 Plant Mobile Equipment.....	158
Table 21-14 Owner's Costs.....	159
Table 21-15 Working Capital Costs.....	160
Table 21-16 Additional Mine Equipment.....	160
Table 21-17 Mine Sustaining Capital Major Rebuilds.....	161
Table 21-18 Pan Operating Cost Summary by Cost Type.....	162

Table 21-19 Pan Operating Cost Summary by Cost Center .....	163
Table 21-20 Pan Summary Average Yearly Manpower Costs .....	164
Table 21-21 Mine Manpower .....	165
Table 21-22 Processing Department Manpower .....	166
Table 21-23 General and Administration Department Manpower .....	167
Table 21-24 Pan Yearly Mine Operating Costs .....	167
Table 21-25 Yearly Equipment Hourly Cost .....	168
Table 21-26 Mine Operating Cost Statistics .....	169
Table 21-27 Pan Yearly Plant Operating Costs .....	170
Table 21-28 Yearly Plant Equipment and Non-Equipment Costs .....	170
Table 21-29 Yearly Plant Operating Cost Statistics .....	171
Table 21-30 Pan Yearly General and Administration Costs .....	171
Table 21-31 Yearly Plant Operating Cost Statistics .....	172
Table 22-1 Economic Projection .....	175

December 19, 2011

xix



## **I SUMMARY**

### **1.1 Introduction**

Gustavson Associates, LLC (Gustavson) was commissioned by Midway Gold Corp. to complete a Feasibility Study for the Pan Gold Project in White Pine County, Nevada, based on the Updated Mineral Resource Estimate dated September 1, 2011. The Feasibility Study is intended to provide a comprehensive technical and economic analysis of the selected development option for the mineral project. This study includes detailed assessments of realistically assumed mining, processing, metallurgical, economic, legal, environmental, social, and other relevant considerations which have successfully demonstrated the economic viability of the project. The purpose of this report is to document the results of the Feasibility Study in compliance with Canadian National Instrument 43-101 Standards of Disclosure for Mineral Projects.

The Pan gold deposit is a sediment-hosted, bulk tonnage Carlin-type gold deposit along the prolific Battle Mountain-Eureka gold trend in east-central Nevada. Midway Gold US Inc. (hereafter referred to as MIDWAY) has drilled, sampled, and mapped the Pan deposit since acquiring the project in 2007. MIDWAY completed 61,875 ft of drilling in 162 holes in 2007 and 2008, and released an updated mineral resource estimate in December 2009. Gustavson performed an independent audit of the 2009 mineral resource estimate as part of a Preliminary Economic Assessment in 2010, and MIDWAY conducted a 14-hole (5774 ft) diamond core drilling program to obtain additional metallurgical and geotechnical data during the latter half of that same year. Gustavson completed a mineral reserve and mine plan as part of the March 2011 Preliminary Feasibility Study, which included an updated geologic model and mineral resource based on data obtained through February 28, 2011. MIDWAY has since completed an additional 33 holes totaling 27,795 ft.

### **1.2 Property Description and Ownership**

The Pan Project is located in White Pine County, Nevada, approximately 22 miles southeast of Eureka and 50 miles west of Ely. The project area consists of 10,373 acres on 550 contiguous, unpatented federal mining claims controlled by MIDWAY. The property is located in the rolling hills of the Pancake Range in the Basin and Range physiographic province. Terrain is gentle to moderate throughout most of the project area, with no major stream drainages. Elevation of the property ranges from 6,400 to 7,500 ft above mean sea level.

At present, no infrastructure or power is in place at the Pan site. A relatively low voltage distribution line crosses the valley floor near a local ranch approximately 5 miles away. A higher voltage transmission line, 69 kV, with capacity suitable for mining and processing operations, is located approximately 14 miles from the project site and six miles north of US 50. Water to support exploration drilling is available from ranch wells approximately 3 miles to the west of the property. Logistical support is available in Eureka, Ely, and Elko, all of which currently

December 19, 2011

1



support large open pit mining operations. Mining personnel and resources for operations at Pan are expected to be available from Eureka, White Pine, and Elko Counties.

### **1.3 Geology and Mineralization**

The geology of the Pan property is dominated by Devonian to Permian carbonate and clastic sedimentary rocks cut by the Pan fault, a steeply west dipping fault that trends north-south. The Pan fault juxtaposes gently west dipping sedimentary units on the west side of the fault with steeply northeast dipping sedimentary units on the east side. Post-mineral Tertiary volcanic rocks nonconformably overlie the faulted Devonian-Permian sedimentary units.

Gold mineralization at Pan occurs in a Carlin-style, epithermal, disseminated, sediment-hosted system. The distribution of the mineralization is controlled by structure, particularly with regard to the development of breccias, and by sedimentary bedding and alteration along unit contacts. Gold deposits within the project area generally occur as elongate bodies associated with structures and dissolution/hydrothermal breccia bodies hosted by the Pilot Shale and, to a lesser extent, the Devils Gate Limestone. Gold deposits also occur in a more tabular fashion within altered and mineralized sedimentary horizons.

### **1.4 Concept and Status of Exploration**

MIDWAY's exploration program includes core and reverse circulation drilling, geologic mapping, geochemical sampling, and geophysical surveys at the Pan property. This comprehensive program has helped to define the geologic occurrence of gold mineralization and identify additional exploration targets on the Pan property. The level of exploration in individual target areas varies from rock and soil sampling with anomalous results to drill holes which reveal anomalous to ore-grade gold values, as determined during the February 2011 Preliminary Feasibility Study. Geochemical and geophysical targets merit additional work, primarily drilling, to test anomalous rock and soil geochemical results. Additional drilling is needed in portions of the deposit to expand and better understand existing drill intercepts.

### **1.5 Mineral Resource Estimate**

Gustavson completed an updated mineral resource estimate for the Pan Project in November 2011. As part of that study, Gustavson created a model to estimate the mineral resources at Pan based on data provided by MIDWAY as of September 1, 2011. No new drilling occurred at North Pan and the February 2011 resource model was not modified during the current study. Gold mineralization in Central and South Pan was re-evaluated during the course of this resource update. Drill hole data including collar coordinates, MIDWAY surveys, sample assay intervals, and geologic logs were provided in a secure Microsoft Access database. Surficial geology maps and cross-sections detailing alteration and lithology were also provided in electronic format. The database has been updated to include the additional 33 reverse circulation drill holes completed by MIDWAY in 2011.

December 19, 2011

2



Gustavson modeled and estimated the mineral resource by constructing geologic, alteration, and mineral domains from the MIDWAY cross sections, and by geostatistically analyzing the drill data to define the parameters required to estimate gold grades in the 3-Dimensional (3D) block model. Leapfrog 3D® geological modeling software was used to create 3D stratigraphic, alteration, and mineral domain solids. MicroModel® software was used to estimate gold grades.

MIDWAY defined the structure, stratigraphy, and alteration of the North, Central, and South Pan zones on 1 inch = 50 ft cross-sections spaced 200 feet apart and oriented east to west. Gustavson combined the MIDWAY subsurface interpretations with surface geology to create 3D stratigraphic and alteration models.

A block model was created for the Pan Deposit using blocks that are 20 feet wide, 20 feet long, and 20 feet high. Each of the blocks was assigned attributes of gold grade, mineral resource classification, rock density, tonnage factor, lithology, alteration, and a grade classification. The blocks were then assigned to a domain as appropriate to assist in estimation.

#### 1.5.1 North Pan

All of the domains were estimated in 3 passes and each block was assigned a classification of measured, indicated, or inferred. The resource classification of each block was based on a factor of the average sample distance in an anisotropic direction as established by the second structure range from the variogram model for the domain being estimated. The measured class utilized a ½ ellipsoid variogram search distance. Indicated was set at a full variogram search distance and inferred was set at 2 times the variogram distance. As an additional requirement, Gustavson limited the measured and indicated estimation data to include only the fire assay intervals. Inferred resource was estimated using all available assay data. Ordinary Kriging was used to estimate grade for all domains.

#### 1.5.2 Central and South Pan

All of the domains were estimated by using large search ellipses oriented in the direction of maximum continuity to provide an estimation of the gold grade within every block inside of the grade shells. The resource classification of each block was based on a factor of the closest sample distance in an anisotropic direction as established by the second structure range from the variogram model for the domain being estimated. The measured class utilized a ½ ellipsoid variogram search distance. Indicated resource was set at a full variogram search distance and inferred resource was set at 2 times the variogram distance. Each domain was estimated using a minimum of 5 composites with no more than 4 composites from a single drill hole. A maximum of 12 composites was allowed to better represent the local variability. Ordinary Kriging was used to estimate grade for all domains.

The mineral resource estimate is summarized in Tables 1-1 through 1-4. This mineral resource estimate includes all drill data obtained as of September 1, 2011, and has been independently verified by Gustavson.

**Table 1-1 North Pan Mineral Resource**

<b>North Pan Measured Resource</b>			
<b>Opt</b>	<b>Tons</b>	<b>Au Opt</b>	<b>oz</b>
0.008	13,994,415	0.0168	234,844
0.006	15,592,007	0.0158	245,850
<b>0.004</b>	<b>18,597,319</b>	<b>0.0140</b>	<b>260,404</b>
<b>North Pan Indicated Resource</b>			
0.008	10,565,126	0.0146	154,540
0.006	12,702,959	0.0133	169,135
<b>0.004</b>	<b>17,006,845</b>	<b>0.0112</b>	<b>189,823</b>
<b>North Pan Measured plus Indicated Resource</b>			
0.008	24,559,541	0.0159	389,384
0.006	28,294,966	0.0147	414,985
<b>0.004</b>	<b>35,604,164</b>	<b>0.0126</b>	<b>450,228</b>
<b>North Pan Inferred Resource</b>			
0.008	122,858	0.0112	1,376
0.006	233,476	0.0091	2,129
0.004	511,402	0.0067	3,427

**Table 1-2 Central Pan Mineral Resource**

<b>Central Pan Measured Resource</b>			
<b>Opt</b>	<b>Tons</b>	<b>Au Opt</b>	<b>oz</b>
0.008	2,329,227	0.0146	33,991
0.006	2,837,448	0.0132	37,482
<b>0.004</b>	<b>3,802,537</b>	<b>0.0111</b>	<b>42,192</b>
<b>Central Pan Indicated Resource</b>			
0.008	1,895,266	0.0122	23,216
0.006	2,524,520	0.0109	27,623
<b>0.004</b>	<b>4,053,056</b>	<b>0.0086</b>	<b>34,885</b>
<b>Central Pan Measured plus Indicated Resource</b>			
0.008	4,224,493	0.0135	57,207
0.006	5,361,968	0.0121	65,105
<b>0.004</b>	<b>7,855,593</b>	<b>0.0098</b>	<b>77,077</b>
<b>Central Pan Inferred Resource</b>			
0.008	240,912	0.0103	2,470
0.006	290,465	0.0096	2,802
0.004	722,079	0.0066	4,741

Table 1-3 South Pan Mineral Resource

South Pan Measured Resource			
Opt	Tons	Au Opt	oz
0.008	13,826,998	0.0182	251,350
0.006	15,584,480	0.0169	263,423
0.004	18,297,337	0.0151	276,641
South Pan Indicated Resource			
0.008	17,440,794	0.0158	275,596
0.006	20,764,856	0.0144	298,599
0.004	26,469,130	0.0123	325,863
South Pan Measured plus Indicated Resource			
0.008	31,267,792	0.0169	526,946
0.006	36,349,336	0.0155	562,022
0.004	44,766,467	0.0135	602,504
South Pan Inferred Resource			
0.008	1,588,716	0.0184	29,274
0.006	1,933,540	0.0164	31,651
0.004	3,096,599	0.0120	37,093

Table 1-4 Total Pan Mineral Resource

Pan Total Measured Resource			
Opt	Tons	Au Opt	oz
0.008	30,150,640	0.0173	520,186
0.006	34,013,935	0.0161	546,756
0.004	40,697,193	0.0142	579,238
Pan Total Indicated Resource			
0.008	29,901,186	0.0152	453,351
0.006	35,992,335	0.0138	495,357
0.004	47,529,031	0.0116	550,571
Pan Total Measured plus Indicated Resource			
0.008	60,051,826	0.0162	973,537
0.006	70,006,270	0.0149	1,042,112
0.004	88,226,224	0.0128	1,129,809
Pan Total Inferred Resource			
0.008	1,952,486	0.0170	33,120
0.006	2,457,481	0.0149	36,581
0.004	4,330,080	0.0105	45,261

## 1.6 Mineral Reserve Estimate

The February 2011 Prefeasibility Study demonstrated that the Pan Project is economically viable, and this Feasibility Study has strengthened that conclusion. Based on the results of the Feasibility Study, Measured and Indicated Mineral Reserves within the designed pits are considered Proven and Probable Reserves as defined by the Canadian Institute of Mining, Metallurgy, and Petroleum. The final reserves are reported using a 0.008 Au opt cutoff for the North and Central pits, and a 0.006 Au opt cutoff for the South pit. Cutoffs were chosen to maximize the NPV of the project and do not necessarily represent the minimum economic cutoff. Pit designs are based on geologic criteria provided in the April 2011 Pit Slope Evaluation report produced by Golder Associates. Geologic solids created for each lithological unit were used as a guide during the pit design process. The limestone units were designed with a 50° inter-ramp wall angle assuming pre-split blasting in these units; all other lithological units were designed with a 45° inter-ramp wall angle.

### 1.6.1 Whittle Optimization

Gustavson generated a series of optimization shells on the South and North resource blocks, ranging from \$236/oz to \$2360/oz. Forty six shells were generated separately for the North and South resource areas. Heap leach recoveries of 65% and 85%, for North and South Pan, respectively, were used in the optimization runs. The general parameters were based on preliminary estimates of operating cost, and incorporated recommendations from the April 2011 Pit Slope Evaluation report. Mining costs were estimated to be \$1.09/ton of material moved for the pit optimization. Crushing, agglomeration, leaching, general and administration, and gold recovery costs were estimated at \$3.71/ton of ore. Only Measured and Indicated Resources were considered in the evaluation; Inferred resources were treated as waste.

### 1.6.2 Calculation Parameters

The series of pit optimizations were graphed and evaluated to compare cash flows, net present values (NPV's) and internal rates of return (IRR's). The final South pit and the North pit optimizations are based on shells at a cost less than the three year trailing average price of

December 19, 2011

6





\$1200/oz in order to achieve a higher NPV and overall lower cash cost per ounce. The option of mining the entire South Pan pit before the North Pan pit was evaluated during the scheduling process. Although the South Pan pit has a 20% higher recovery factor, mining the South Pan in phases results in a higher IRR by delaying the high strip of the Phase 2 South Pit until the end of the mine life. The option of mining the North pit first was also evaluated, but the higher recovery from the South Pan pit (85%, compared to 65% from North Pan) and shorter estimated leach times render the South pit the more favorable option to mine first.

### 1.6.3 Cutoff Grade Equations

The mineral reserve estimate for the Pan Project is based on designed open pits with maximized revenues at a gold price of \$1180 per ounce. Cutoff grades of 0.006 Au opt (0.21 gpt) in the South pit and 0.008 Au opt (0.27 gpt) in the North & Central pits provide the highest NPV for the project.

### 1.6.4 Mineral Reserve Estimate

Using the NI 43-101 Updated Mineral Resource Estimate filed in November 2011, Proven and Probable Reserves of 53,254,000 tons at a grade of 0.016 opt are contained in the mineral resource at Pan. A total of 864,000 oz of gold are contained in the Pan Project mineral reserves. Estimated mineral reserves for the Pan Project are presented in Table 1-5.

**Table 1-5 Pan Project Mineral Reserves Estimate**

<b>North and Central Pan</b>  <b>Cutoff Grade:</b> <b>0.008 opt / 0.274 g/tonnes</b>	<b>Tons</b>	<b>Gold</b>	
	<b>(x 1000)</b>	<b>opt</b>	<b>ounces (x 1000)</b>
<b>North Pan</b>			
Proven Reserves	12,625	0.018	223.30
Probable Reserves	10,993	0.015	162.66
Proven & Probable Reserves	23,618	0.016	385.95
Inferred within Designed Pit	351	0.012	4.29
Waste within Designed Pit	27,823		
Total tons within Designed Pit	51,791		
<b>Central Pan</b>			
Proven Reserves	1,799	0.015	27.78
Probable Reserves	1,125	0.013	15.00
Proven & Probable Reserves	2,924	0.015	42.78
Inferred within Designed Pit	75	0.010	0.77
Waste within Designed Pit	5,387		
Total tons within Designed Pit	8,386		
<b>Sub Total - North + Central</b>			
Proven Reserves	14,423	0.017	251.08
Probable Reserves	12,119	0.015	177.66
Proven & Probable Reserves	26,542	0.016	428.74
Inferred within Designed Pit	426	0.012	5.06
Waste within Designed Pit	33,210		
Total tons within Designed Pit	60,177		

Table 1-5 cont.

<b>South Pan - Phases 1 and 2</b> <b>Cutoff Grade:</b> <b>0.006 opt / 0.206 g/tonnes</b>	<b>Tons</b>	<b>Gold</b>	
	<b>(x 1000)</b>	<b>opt</b>	<b>ounces (x 1000)</b>
<b>South Pan - Phase 1</b>			
Proven Reserves	11,856	0.018	215.44
Probable Reserves	7,593	0.016	119.26
Proven & Probable Reserves	19,449	0.017	334.70
Inferred within Designed Pit	56	0.010	0.55
Waste within Designed Pit	31,887		
Total tons within Designed Pit	51,392		
<b>South Pan - Phase 2</b>			
Proven Reserves	1,548	0.014	21.01
Probable Reserves	5,716	0.014	79.80
Proven & Probable Reserves	7,263	0.014	100.81
Inferred within Designed Pit	212	0.016	3.39
Waste within Designed Pit	29,485		
Total tons within Designed Pit	36,961		
<b>Sub Total - Phase 1 + 2</b>			
Proven Reserves	13,404	0.018	236.46
Probable Reserves	13,308	0.015	199.05
Proven & Probable Reserves	26,713	0.016	435.51
Inferred within Designed Pit	269	0.015	3.94
Waste within Designed Pit	61,372		
Total tons within Designed Pit	88,353		
<b>Total Reserves</b>			
	<b>(x 1000)</b>	<b>opt</b>	<b>ounces (x 1000)</b>
Proven Reserves	27,827	0.018	487.51
Probable Reserves	25,427	0.015	376.71
Proven & Probable Reserves	53,254	0.016	864.22
Inferred within Designed Pit	695	0.013	9.0
Waste within Designed Pit	94,582		
Total tons within Designed Pit	148,531		

### 1.7 Conclusions and Recommendations

As a result of the work done as part of and resulting from this Feasibility Study, Gustavson concludes:

- The Pan deposit now contains over 1.1 million ounces of gold in Measured and Indicated Mineral Resource categories using a 0.004 opt cutoff.
- There continues to be good potential for the discovery of additional Mineral Resources at Pan.
- There is a proven and probable Mineral Reserve of 53,254,000 tons, containing 864,000 ounces of gold.
- The Pan project is an economic mining project generating approximately \$122 million net present value, and an internal rate of return of 32.4% at a gold price of \$1200.

Based on the results of this Feasibility Study, Gustavson recommends:

- Continuation of drilling to fill-in areas that are promising development areas, specifically between the North and South pits. MIDWAY is planning on \$ 1.5 million in drilling for the next two years.
- Finalization of engineering for infrastructure, buildings, mining, and site facilities. This is currently estimated at \$0.86 million (included in capital costs in the Feasibility Study)
- Support for the EIS and permitting, estimated to be \$ 0.4 million over the next 2 years.
- Construction of the access road which is estimated at \$ 1.7 million.
- Drilling and testing of a water well, estimated at \$0.1 million.
- Purchase of long-lead equipment estimated at approximately \$ 2.0 million.

December 19, 2011

9



## 6 HISTORY

### 6.1 Exploration History

Mr. Lyle Campbell discovered the Pan deposit while prospecting in 1978, when he encountered gold-bearing jasperoid, now referred to as Campbell Jasperoid. Mr. Campbell staked 147 original unpatented mining claims, and transferred ownership of the claims to the LFC Trust in 1986. The LFC Trust was bought out in 2008 and is now owned by NVMC.

Several companies have conducted exploration on the property since 1978. The following paragraphs summarize exploration activities at Pan based on information provided in previously issued technical reports:

- Mr. Campbell leased his claims to Amselco in 1978. The majority of drilling exploration carried out by Amselco took place in North Pan.
- In 1986, Hecla conducted a drilling exploration program in the central portion of the Pan property.
- Echo Bay leased the claims in 1987 and completed an exploration drilling program that resulted in the discovery of gold mineralization at South Pan.
- The Pan property was explored under a joint venture between Alta Gold and Echo Bay from 1988 through 1991. Drilling was conducted in both North and South Pan, in conjunction with geologic mapping, geochemical sampling, and an induced polarization geophysical survey. The Alta Bay joint venture initiated studies in support of mining development, including an archaeological survey, additional metallurgical test work, and preliminary mineral reserve calculations and mine designs.
- Alta Gold retained ownership of the Pan Project after dissolution of the joint venture until 1992. Drilling exploration was reported, but the associated holes have not been validated and are not included in the modern day resource database.
- In 1993, Southwestern Gold Corporation completed drilling exploration on a small section of claims that they held at that time west of North Pan. The associated drill hole collars have been identified in the field, but no other information has been validated and these holes are not included in the modern resource database.
- The Pan Project was dormant from 1993 until 1999, when Latitude leased the property from LFC Trust. Between 1999 and 2001, Latitude explored the property as part of a joint venture with Degerstrom. Geologic mapping and outcrop and soil sampling were completed under the joint venture, as was drilling and metallurgical testing.
- Latitude drilling focused primarily on North and South Pan mineralization, but also resulted in the discovery of mineralization in the modern day Syncline and Black

December 19, 2011

21

Stallion target areas of Central Pan. Latitude terminated the joint venture with Degerstrom in mid-2001, and joint ventured the project to Metallica later that year. From LFC Trust files, it appears that Metallica focused on thermal imagery and lineament study of satellite data over the Pan area. No additional subsurface exploration work was completed. The LFC Trust terminated the lease agreement with Latitude in 2002, citing Latitude's inability to meet financial obligations.

- Castleworth Ventures, Inc. leased the Pan claims in January 2003. The company completed drilling exploration and conducted geologic mapping, sampling, metallurgical test work, and resource estimation. On April 16, 2007, Pan Nevada Gold Corporation (formerly Castleworth Ventures, Inc.) was acquired by MIDWAY.
- Since acquiring the Pan Project in 2007, MIDWAY has completed 209 holes, of which 195 were reverse circulation and 14 diamond core drill holes for a total of 95,394 ft. Drilling efforts have generally focused on expanding known mineralization, but also include confirmation drilling and exploration drilling in several potential target areas on the Pan property. In addition to drilling exploration, MIDWAY has completed geologic mapping, soil and outcrop sampling, and gravity survey.

## 6.2 Historical Resource and Reserve Estimates

Historical resource and reserve estimates are described in detail in the 2005 report produced by Mine Development Associates (MDA). These resource and reserve estimates have not been verified, are not considered reliable, are not relevant to the updated mineral resource presented in this report, and are mentioned here for historical completeness only.

December 19, 2011

22



## 16 MINING METHODS

### 16.1 Open Pit Mine Plan

The Pan gold deposit contains mineralization at or near the surface and spatially distributed in a manner that is ideal for open pit mining methods. Gold grade distribution and the results of preliminary mineral processing testing indicate that ore from the Pan deposit can be processed by conventional heap leaching methods. The method of material transport evaluated for this study is open pit mining using a 21.6-yd<sup>3</sup> front end shovel as the main loading unit with a 16-yd<sup>3</sup> front end loader as a backup loading unit. The ore will be loaded into 150-ton haul trucks and transported to the primary jaw crusher, which will be set up at the mouth of the pit. The primary jaw crusher is a semi-mobile unit mounted on skids that will be moved to the mouth of whichever pit is being mined. The crushed ore material will be conveyed to the secondary crushing site, crushed to P80 ½-inch (North) and P80 1½-inch (South), agglomerated, and conveyed to the heap leach pad. The waste material will be loaded into the 150-ton haul trucks and hauled directly to the waste dump. The truck haul method was chosen over in-pit mobile crushers and mobile conveyors in order to simplify waste dump construction and allow for more flexibility in day to day mining activities.

MIDWAY will own, operate, and maintain all equipment. The general site layout, including pits, waste dumps, the secondary crusher site, infrastructure, ponds, and heap leach pads, is shown on Figure 16-1.

December 19, 2011

93





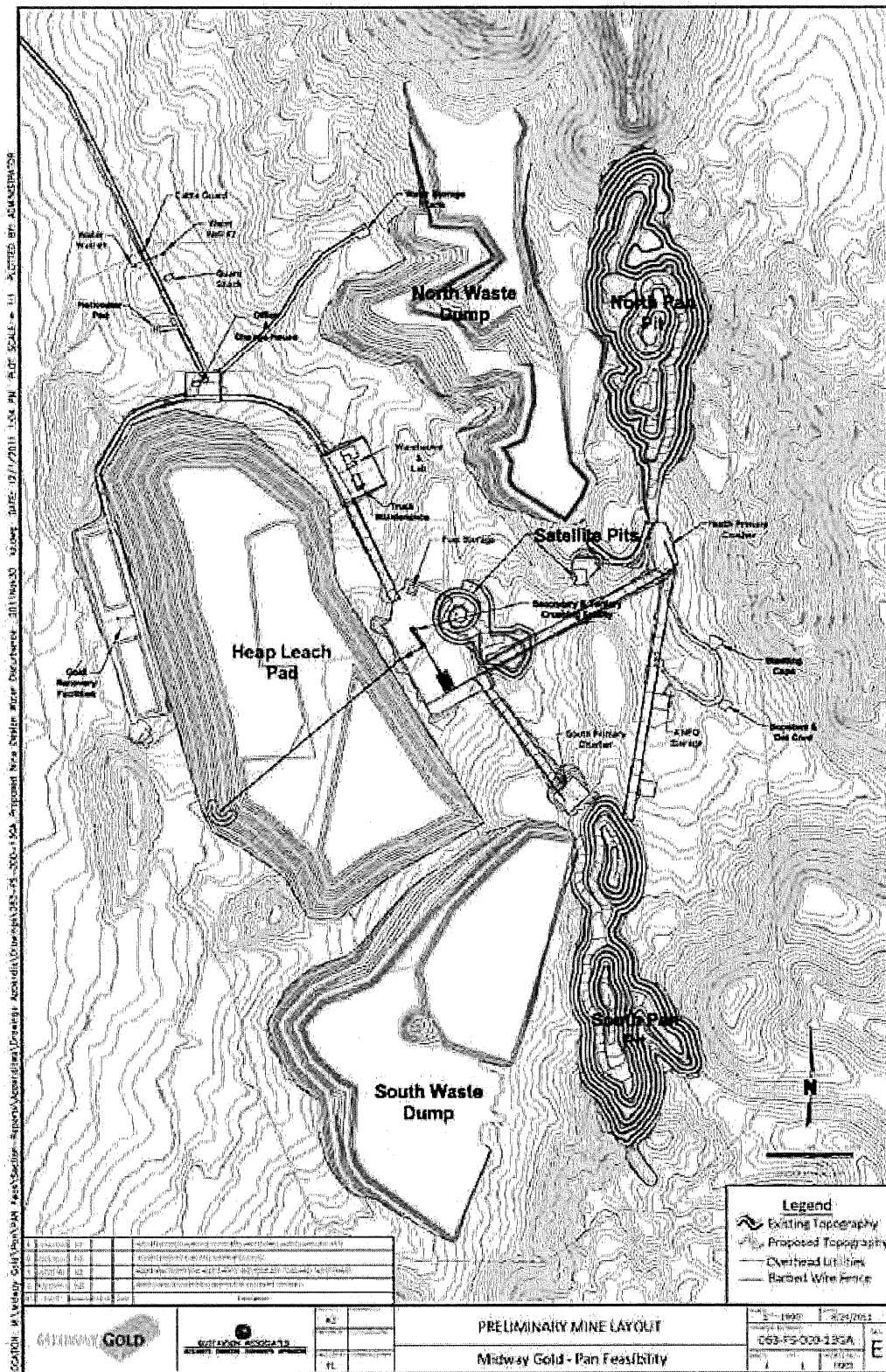


Figure 16-1 General Site Layout





Ore production is planned at a nominal rate of 17,000 tons per day (tpd), equivalent to 6.2 million tons per annum with a 8.8 year mine life. Mining is planned on a 7 day per week schedule, with two 12 hour shifts per day. Peak ore and waste production is estimated at 67,000 tpd. The average life of mine stripping ratio is 1.79:1 waste-to-ore, using a 0.006 Au oz/ton cutoff for the South Pan pit and a 0.008 Au oz/ton cutoff on the North and Central pits. The change in cutoffs from one pit to the next are a result of the metallurgical recovery testing which showed the South pit has an expected average recovery of 85% and the North pit has an expected recovery of 65%. Other cutoff scenarios were evaluated using 0.004, 0.006 and 0.008 Au oz/ton, but the scenario presented here provides the best IRR and NPV at a 5% discount rate.

#### 161.1.1 Pit Design

Whittle-generated pit surfaces, which maximized revenue based on the estimated average of \$1,180 per ounce gold, were used in conjunction with the Pan block model to design the open pits with haul roads and catch benches for North Pan, Central Pan, and South Pan. Pit designs are based in part on geologic criteria provided in the April 2011 Prefeasibility Level Pit Slope Evaluation report produced by Golder Associates. Geologic solids created for each lithological unit were used as a guide during the pit design process. The limestone units were designed with a 50° inter-ramp wall angle assuming pre-split blasting in these units, all other lithological units were designed at a 45° inter-ramp wall angle. Haul roads are designed at a width of 90 ft, which provides a safe truck width (23 feet) to running surface width ratio of 3.9. Maximum grade of the haul roads is 10%, except for the lowermost three to five benches where the grade is increased to 12% and the ramp width is narrowed to 50 feet to minimize excessive waste stripping. The pit design criteria are presented in Table 16-1.

Table 16-1 Pit Design Criteria

Mine Design Criteria		
Pit Design Criteria	Limestone Units	All Other Rock Units
Inter-Ramp Angles	50 Degrees	45 Degrees
Face Angles	70 Degrees	63 Degrees
Catch Bench Berm	30 ft.	30 ft.
Catch Bench Vertical Spacing	60 ft.	60 ft.
Minimum Turning Radius	90 ft.	90 ft.
Road Widths	90 ft.	90 ft.
Road Grade	10%	10%
Road Widths Pit Bottom	50 ft.	50 ft.
Road Grade Pit Bottom	12%	12%

Design of the North Pan pit has not changed considerably from the design considered during the Prefeasibility Study, but the size of the final South Pan pit has approximately doubled. The increase in size of the South Pan pit is based on the positive results of recent drilling in the Wendy target area. The Central Pan pits, which were not considered during the Prefeasibility Study, are located very close to the leach pad and will also provide suitable over-liner material for pad construction. The Central Pan pits will be mined first and then backfilled with waste from the South Pan pit. Design of the South Pan pit includes two phases of construction in order to account for a strip ratio that is considerably higher than the other pit designs. An intermediate pit was also designed near the south end of the North Pan pit to provide a borrow source for over-liner material. The final pit designs are shown in Figure 16-2

Study, are located very close to the leach pad and will also provide suitable over-liner material for pad construction. The Central Pan pits will be mined first and then backfilled with waste from the South Pan pit. Design of the South Pan pit includes two phases of construction in order to account for a strip ratio that is considerably higher than the other pit designs. An intermediate pit was also designed near the south end of the North Pan pit to provide a borrow source for over-liner material. The final pit designs are shown in Figure 16-2

December 19, 2011

96



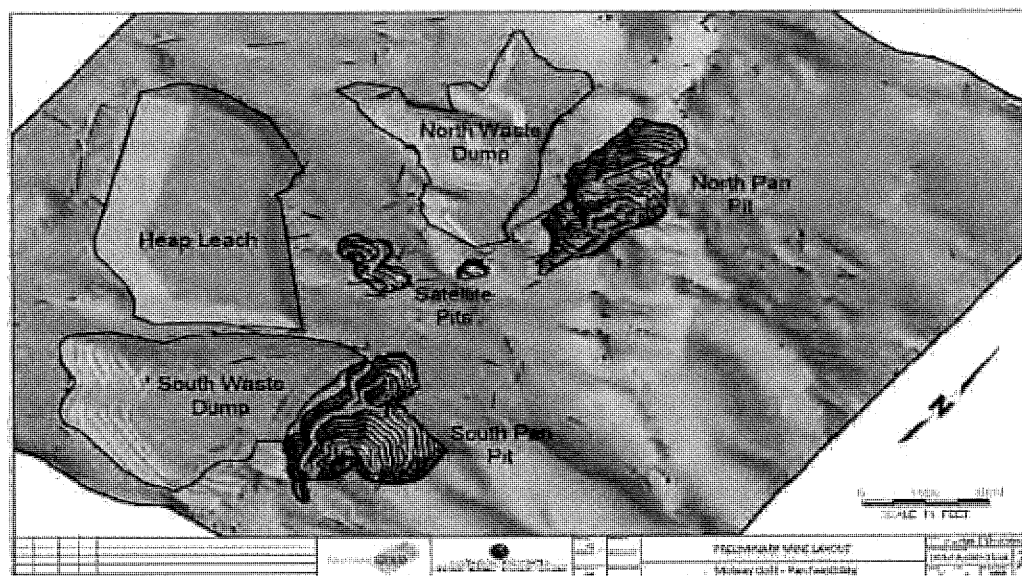


Figure 16-1 Final Pit, Heap and Waste Dumps

December 19, 2011

## 17 RECOVERY METHODS

### 17.1.1 Process Description

Material from the North, Central, and South Pan pits will be processed using conventional heap leaching methods. Ore will be mined and processed first from the Central pit, then the South pit (phase I), from the North pit, and finally from the South pit (phase II).

Ore will be crushed by the primary edge-of-pit mobile jaw crusher and secondary and tertiary cone crushers prior to leaching. Screening at secondary and tertiary crushing stations will control the crush size. The crushed ore will be agglomerated and conveyed to the heap leach pad. Crush size, leach kinetics, and recoveries are based on current metallurgical testing.

### 17.1.2 Production Rate and Products

The Pan mine and material handling system is designed for a throughput of 17,000 tons of ore per day, or 6.2 million tons of ore per year. The ADR plant is designed at 5,000 gpm, and is expected to produce approximately 80,000 ounces of gold per year. The entire mine and process flow is depicted in Figure 17-1.

December 19, 2011

122



Typical for most Carlin type ores, the reagent consumption is relatively low (Table 17-1). Based on the metallurgical test work, RDI recommended using 0.4 to 0.6 lbs sodium cyanide per ton. 0.50 lbs per ton sodium cyanide consumption at a P80 ½-inch crush size has been used in the economic model.

**Table 17-1 Estimated Reagent Consumption**

LIME	1.8 Pounds per ton
CEMENT	5 pounds per ton
CYANIDE 1 ½" Crush	0.27 pounds per ton
CYANIDE ½" Crush	0.50 pounds per ton

Tests were completed on both the South and North Pan materials to support these estimates.

Agglomeration equipment includes:

- Cement Storage Silo package
- Lime Storage Silo package
- Agglomerator Unit

#### 1.7.1.6 Conveying and Stacking

Agglomerated ore is delivered to the short overland conveyor, which feeds a series of grasshopper conveyors and ultimately the telestacker conveyor (Figure 17-5). The telestacker conveyor distributes the crushed and agglomerated ore evenly across the leach pad, in 30 foot lifts.

- Agglomerator Discharge Conveyor 400-CV1
- Flat Grade Jump Conveyor 400-JC1-29
- Feed Conveyor 400-CV3
- IC Conveyor 400-CV4
- Telestacker Conveyor

## 21 CAPITAL AND OPERATING COSTS

### 21.1 Capital Cost Estimate

The capital cost estimate for the Pan Project includes all quoted equipment costs, quoted installation costs, and quantity takeoffs for major components. A breakdown of the total estimated initial capital cost is presented in Table 21-1.

**Table 21-1 Pan Project Capital Cost Estimate**

<b>Feasibility Capital Costs</b>	<b>Estimated Cost</b>
Mine Mobile Equipment	\$ 25,614,600
Mine Development	\$ 2,000,000
Mine Buildings	\$ 1,903,800
Primary Crushing - Edge of Pit to Stockpile	\$ 5,604,700
Ore Circuit - From Stockpile to Leach Pad	\$ 10,762,800
Gold Recovery Plant	\$ 7,290,500
Plant Mobile Equipment	\$ 281,600
Leach Pad Installation	\$ 6,737,000
Process Ponds	\$ 3,623,000
Storm Water Diversion	\$ 1,497,200
Infrastructure	\$ 13,603,500
Owner's Costs	\$ 4,768,800
Reclamation Bond, Facilities	\$ 500,000
<b>Subtotal</b>	<b>\$ 84,187,500</b>
Contingency	\$ 6,765,800
Working Capital	\$ 8,214,400
<b>Total Initial Capital</b>	<b>\$ 99,167,700</b>

#### 21.1.1 Basis

The capital cost estimates were generated primarily from quotes from equipment suppliers and contractors. Excluding contingency and working capital, 73% of the estimated costs are from quotes. In-house take-offs and estimated costs from previous construction projects were used for the remaining items. All individual costs include the appropriate sales tax component.

#### 21.1.2 Mine Development

Gustavson has included an allowance for pioneering, clearing, grubbing, and initial haul road construction in the capital cost estimate. The estimated quantities and costs associated with mine development tasks are presented in Table 21-2.

applied to the appropriate capital asset and income categories to calculate the regular income tax burden. Alternative minimum tax provisions were applied to those years in which the regular tax was below the minimum allowable level.

Projected economic outcomes were prepared on an annual basis, including the internal rate of return and utilizing a 5% discount factor for net present value calculations. An analysis of the years required for payback of initial capital and the payback multiple (the positive cash flows as a multiple of the total capital investment) were also generated.

## 22.5 Economic Projection

The project is projected to have a total lifespan of 9.75 years: one year of construction and pre-production, 8.25 years of full operations and one-half year of residual gold production. Approximately 864,000 ounces of gold are projected to be mined and 649,000 ounces of gold recovered and produced for sale. An initial capital investment of \$99.168 million, including contingency and working capital, is expected to be required with a total of \$154.904 million over the life-of-mine, including reclamation, contingency and all sustaining capital. Following the Gold Institute (GI) guidelines, cash operating cost is projected to be \$537 per ounce of gold. The GI total cash cost (including royalties) would be \$585 per ounce and the GI total production cost is expected to be \$824 per ounce. The economic projection for the Pan Project is presented in Table 22-1.

Table 22-1 Economic Projection

Gold Price	Net Present Value @ 5%	Internal Rate of Return	Payback Period	Payback Multiple
\$855	\$4,100,000	6.0%	7.22	1.30
\$1,200	\$122,600,000	32.4%	2.59	2.88
\$1,550	\$235,100,000	55.7%	1.70	4.53
\$1,900	\$344,400,000	79.1%	1.20	6.30

## 22.6 Sensitivity Analysis

### 22.6.1 Price

Consistent with almost all gold projects, the Pan Project is very responsive to changes in the price of gold. For this study, an increase in the average gold price to \$1550 per ounce increases the NPV-5 by 92% to approximately \$235 million. An increase to \$1900/oz in the gold price results in an NPV-5 of \$344 million, an increase of 181% (Figure 22-1).

December 19, 2011

175





## EXHIBIT 2

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

**Date of Report: November 21, 2012**  
(Date of earliest event reported)

**MIDWAY GOLD CORP.**  
(Exact Name of Registrant as Specified in Charter)

**British Columbia, Canada**  
(State or Other Jurisdiction of Incorporation)

**001-33894**  
(Commission File Number)

**98-0459178**  
(IRS Employer Identification No.)

**8310 South Valley Highway, Suite 280**  
**Englewood, Colorado**  
(Address of principal executive offices)

**80112**  
(Zip Code)

Registrant's telephone number, including area code: **(720) 979-0900**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

**Item 1.01 Entry into Material Definitive Agreements**

On November 21, 2012, Midway Gold Corp. (the “**Registrant**” or “**Midway**”) announced a US\$70,000,000 private placement of Series A Preferred Shares (the “**Series A Preferred Shares**”) to institutional accredited investors, including INV-MID, LLC (as “**Lead Investor**”), EREF-MID II, LLC, and HCP-MID, LLC (collectively, with the Lead Investor, the “**Investors**”). The Private Placement is expected to close on or before December 13, 2012.

In connection with the private placement, Midway entered into Share Purchase Agreements, a Registration Rights Agreement and a Side Letter with the Investors, each effective November 21, 2012, and agreed to the terms of the Series A Preferred Amendment to Midway’s Articles of Incorporation. Hale Capital Partners, L.P. participated as part of the Investors in the private placement. Nathaniel Klein, a current director, is Vice President of Hale Capital Partners, L.P. and abstained from approving the private placement and the transactions contemplated thereunder.

**Share Purchase Agreement**

Under the terms of the Share Purchase Agreements, Midway agreed to sell and the Investors agreed to purchase 37,837,838 Series A Preferred Shares at a price of US\$1.85 per Series A Preferred Share, for aggregate purchase consideration of US\$70,000,000. The proceeds will be used for working capital and general corporate purposes.

The Share Purchase Agreements contain customary representations and warranties, including Midway representations related to availability of securities law exemptions, due authorization, financial statements, capitalization, property (title, permits, environmental), employee, insurance, tax compliance and regulatory matters and Investor representations related to accredited investor status, authorization and securities law matters. The Share Purchase Agreements contain customary closing conditions, including closing opinion delivery, execution of a Registration Rights Agreement, filing of amendments to Midway’s Articles of Incorporation to authorize the issuance of Series A Preferred Shares, no material changes, no litigation, delivery of consents and certificates and other customary closing conditions, indemnification undertakings, Investors’ expense reimbursement and other obligations. The Share Purchase Agreements are governed by New York law.

Neither the Series A Preferred Shares nor the Common Shares issuable upon conversion or paid as dividends have been registered under the Securities Act of 1933, as amended (the “**U.S. Securities Act**”), or any state securities laws. The Series A Preferred Shares will be issued only to institutional “accredited investors: (as defined in Rule 501(a) of Regulation D) pursuant to exemptions from such registration requirements and will be deemed “restricted securities” as defined in Rule 144(a)(3) of the U.S. Securities Act.

No underwriting discounts, fees or commissions are payable in connection with the private placement.

The Private Placement is expected to close on or before December 13, 2012.

**Series A Rights**

In connection with the private placement, Midway will amend its Articles of Incorporation to authorize Series A Preferred Shares in the capital of Midway with certain terms, conditions, and rights (the “**Series A Rights**”). Material provisions of the Series A Rights are as follows:

**Voting:** Series A Preferred Shares will have the following voting rights:

**Voting at Shareholder Meetings:** Series A Preferred Shares will be entitled to vote, on an as converted basis, at all meetings of Midway’s shareholders, except as otherwise required by law or in the amended Articles of Incorporation.

- (a) **Approval of Certain Corporate Actions:** The consent or affirmative vote of the Preferred Super Majority (initially the Lead Investor until the Lead Investor owns less than 3,783,784 Series A Preferred Shares, then the holders of a majority of the Series A Preferred Shares) is required for Midway to effect any of the following:

- (b) create a new class or series of shares equal or superior to the shares of such class;
- (c) redeem or repurchase any shares of the Company except for purchases at cost upon termination of employment;
- (d) a voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the Company;
- (e) change the special rights or restrictions attached to the Series A Preferred Shares;
- (f) amend or repeal of any provision of the Company's Notice of Articles or Articles in a manner adverse to the holders of Series A Preferred Shares; or
- (g) issue any additional Common Shares or common share equivalents for less than the Conversion Price (initially US\$1.85) applicable to the Series A Preferred Shares; except for any of the following:
  - (i) Common Shares pursuant to a Stock Split;
  - (ii) securities issued upon exercise, conversion or exchange of existing and outstanding Securities Equivalents on the date hereof;
  - (iii) options to acquire Common Shares (and Common Shares issuable upon exercise of such options) issued in accordance with any employee incentive stock option plan, or any amendment to a stock option plan, of the Company approved by the shareholders of the Company for the Company's management, directors and employees where the exercise price or conversion price of such Options is below the Conversion Price, but is not less than the Closing Price of the Common Shares at the time of such grant or issuance; provided, further, that the aggregate of such grants, issuances or sales per calendar year shall not exceed five percent (5%) of the issued and outstanding shares of Common Shares as of December 31 of such calendar year;
  - (iv) Common Shares issued for the purpose of redeeming in full the Series A Preferred Shares in cash; or
  - (v) up to a maximum of 756,757 Common Shares to be used exclusively for real property acquisitions, including by way of a joint venture.

**Director Appointment:** Upon approval of a majority of the holders of Common Shares of Midway who cast votes at a meeting of Common Shareholders, the Preferred Governance Majority (initially the Lead Investor until the Lead Investor owns less than 7,567,568 Series A Preferred Shares, then the holders of a majority of the Series A Preferred Shares) has the right to nominate one (1) director nominee for election to the Board to be elected by the Preferred Holders (the "**Preferred Director**"), voting as a separate series at each annual or special meeting of shareholders of the Company or action by written consent of shareholders at which directors will be elected. If Midway's board of directors is increased beyond seven (7) members, increases shall occur in increments of two (2) and the Preferred Governance Majority will have the right to designate one (1) additional director nominee for election or appointment as director. The Preferred Governance Majority has the right to fill any vacancy of the Preferred Director position. The director appointment rights terminates if there are less than 7,567,568 Series A Preferred Shares issued and outstanding. These rights are subject to approval of the holders of a majority of the Common Shares.

**Dividend Rights:** Series A Preferred Shares will be entitled to an annual 8% dividend, compounded monthly and payable quarterly in cash or, at the option of Midway and subject to certain conditions, in common shares. Dividends are payable beginning on April 1, 2013, and thereafter be paid on the first business day of each following quarter, beginning July 2, 2013. Midway may elect to pay dividends in Common Shares based on the closing price on NYSE MKT the day before the dividend is paid; provided that the issuance is an exempt purchase pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended. No dividend or other distribution greater than the Series A Preferred Dividend will be paid, declared or set apart for payment in respect of any Common Shares or shares of any other class ranking junior to the Series A Preferred Shares in

respect of dividends (and the Series A Preferred Shares are deemed to rank senior to each class of shares that is created before it).

**Liquidation Preference:** Series A Preferred Shares shall have a liquidation preference equal to 125% of the initial issue price of the Series A Preferred Shares (initially US\$1.85) plus any accrued dividends in connection with certain liquidation events, including:

- (a) a voluntary or involuntary liquidation, dissolution or winding-up of the Registrant's affairs;
- (b) any merger, amalgamation, reorganization, arrangement, acquisition or other similar transaction of Midway with another person or entity, pursuant to which the holders of voting securities of Midway immediately prior to the transaction hold (assuming an immediate and maximum exercise/conversion of all derivative securities issued in the transaction), immediately after such transaction, directly or indirectly, less than 50% of the voting power to elect directors of Midway resulting from the transaction (unless not deemed a liquidation event as provided in the Series A Rights);
- (c) a sale, lease, conveyance or other disposition of all or substantially all of the property or business of the Registrant (directly or through a subsidiary) or the sale of substantially all of the properties, title, or rights related to the properties owned by Midway's U.S. subsidiary or U.S. affiliate in White Pine County, Nevada (unless not deemed a liquidation event as provided in the Series A Rights); or
- (d) the Common Shares are no longer listed or traded on any of the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, Inc., the NYSE MKT LLC, the NASDAQ Global Select Market, the NASDAQ Capital Market or the OTC Bulletin Board.

**Conversion Rights:** Series A Preferred Share have the following conversion terms:

Conversion: Each Series A Preferred Share is convertible into one Midway Common Share, subject to adjustment for stock splits and recapitalizations, at any time by the holder of Series A Preferred Shares.

Mandatory Conversion: Midway has the option to the right to force the conversion of the Series A Preferred Shares after 1 year, subject to certain conditions, including, but not limited to: (a) the Common Shares trade on the NYSE MKT or other eligible market above \$3.70, as adjusted for stock splits and recapitalizations, for 20 consecutive trading days; (b) the Common Shares are registered for resale under the U.S. Securities Act or can be resold under Rule 144 without volume limitations; (c) no public announcement has been made of a pending or proposed liquidation event; (d) holders are not in possession of non-public material information; (e) no black-out period restricting the sale of Common Shares; (f) the issuance is an exempt purchase pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended; and (g) the number of Series A Preferred Shares subject to the mandatory conversion will be calculated as of the date of the conversion based on the product of (i) the aggregate number of common shares issuable by Midway to all holders of Series A Preferred Shares upon such conversion multiplied by (ii) the average of the dollar volume-weighted average price for such common shares on NYSE MKT during the period beginning at 9:30:01 a.m., New York time and ending at 4:00:00 p.m., New York time, as reported by Bloomberg through its "Volume at Price" function for each of the twenty (20) consecutive days immediately prior to the conversion shall not exceed 30% of the average of the aggregate dollar trading volume of common stock traded on the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, Inc., the NYSE MKT LLC, the NASDAQ Global Select Market, the NASDAQ Capital Market and the OTC Bulletin Board for the five (5) consecutive trading days for each of the twenty (20) consecutive trading days immediately preceding the applicable conversion.

**Mandatory Redemption:** Five (5) years after the date of issuance the Series A Preferred Shares are redeemable by either Midway or the holders of Series A Preferred Shares for cash at US\$1.85 per share, as adjusted for stock splits and recapitalizations. The redemption payment is payable in legal available funds within 30 days after a redemption notice. If Midway is prohibited from redeeming Series A Preferred Shares, then the Registrant shall distribute all of the legally available funds to the holders of the Series A Preferred Shares and repay any amounts otherwise due in equal quarterly payments for a period of two (2) years from the date that is five (5) years after the date of issuance of the Series A Preferred Shares.

If the redemption is not completed during the two year period, the Preferred Super Majority may (i) voting as a single class (to the exclusion of the holders of all other securities and classes of capital stock of the Company), vote to elect such number of additional directors which shall constitute a majority of Midway's Board of Directors, and the number of directors constituting the Company's Board of Directors shall automatically be increased as necessary, and (ii) in the event it is not permitted, the Preferred Super Majority may sell, as may be permitted by applicable law, on behalf of the Company the assets of the Company, in its discretion, that are sufficient to redeem the remaining Series A Preferred Shares. The director appointment rights are subject to approval of the holders of a majority of the Common Shares.

### Registration Rights Agreement

In connection with the Private Placement, Midway entered into a Registration Rights Agreement with the Investors, under which Midway will register the Common Shares issued or issuable upon conversion of the Series A Preferred Shares and upon payment of a dividend in kind. Under the Registration Rights Agreement, Midway has agreed, within 90 days after closing, to use all commercially reasonable efforts to prepare and file with the SEC a registration statement on Form S-3 (or such other form as available if Form S-3 is not available) and a Canadian prospectus covering the resale of all of the common shares common shares issued or issuable upon conversion of the Series A Preferred Shares. Midway will maintain the effectiveness of the registration statement until all Common Shares have been sold or may be sold without registration under Rule 144 of the U.S. Securities Act without any limitation as to volume or manner of sale requirements. The Registration Rights Agreement contains customary terms and conditions and does not provide for any specific cash settlement or liquidated damage payments.

### Side Letter

In connection with the Private Placement, Midway entered into a side letter with the Investors providing for certain board nomination and committee appointment rights, including the following:

**Nomination Right:** The Lead Investor has the right to the right to nominate one (1) director nominee for election to the Midway's board of directors to stand for election at each annual or special meeting of shareholders of the Registrant or action by written consent of shareholders at which directors will be elected. Nathaniel Klein, a current director and Vice President of Hale Capital Partners, L.P., shall be nominated as the initial director to stand for election to Midway's board of directors at the next annual shareholders meeting.

**Nomination and Election Right:** The side letter also provides for Series A Preferred Share director nomination and election rights consistent with the Series A Rights. These rights are subject to approval of the holders of Common Shares.

**Director Vacancy and Observation Right:** At closing of the Private Placement, Nathaniel Klein will resign as a director and Martin Hale will be appointed as a director by the board in his place. Nathaniel Klein shall maintain observation rights to the board until his election to the board at the next annual general meeting of the Registrant.

**Common Share Approval:** Midway has agreed to seek Common Shareholder approval of the Series A Preferred Share director nomination and appointment rights at the next annual or special meeting of the shareholders and at each meeting thereafter until such approval is obtained.

**Committee Appointments:** Midway has agreed to appoint Martin Hale, President of Hale Capital Partners, L.P., or his nominee to Midway's nominating committee and compensation committee of the Board of Directors. In addition, Midway has agreed to form a budget and work program committee, consisting of three non-executive directors, one of whom will be either Martin Hale or upon his election to the board the Preferred Director, and the Chief Executive Officer (CEO), whose mandate shall be to review and approve the annual business and financing plans and capital and operating budgets (and any modifications of, or deviations from such plans or budgets). Any and all approvals of the committee relating to such plans and budgets must be unanimous; provided that Martin Hale or the Preferred Holder Director, as the case may be, and the CEO of the Company shall cooperate and work together in good faith to resolve any issues that the committee has identified as an impediment to their unanimous approval.

The foregoing summary of certain aspects of the Private Placement is qualified in its entirety by reference to the Share Purchase Agreement, Registration Rights Agreement, Side Letter, and Series A Rights, copies of which are filed as, respectively, Exhibits 10.1, 10.2, 10.3 and 3.1 to this Current Report on Form 8-K and which are hereby incorporated by reference into this Item 1.01.

### **Item 3.02 Unregistered Sales of Equity Securities**

The offer and sale of the Series A Preferred Shares is anticipated to be exempt from registration under Section 4(a)(2) and Regulation D Rule 506 of the U.S. Securities Act. The Private Placement will be conducted with limitations on resale and no general solicitation, and each purchaser of the Series A Preferred Shares will be an "Accredited Investor" as defined under Rule 501(a) of Regulation D.

### **Item 9.01. Exhibits**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
3.1	Form of Series A Preferred Rights (Amendment)
10.1	Share Purchase Agreement
10.2	Registration Rights Agreement
10.3	Side Letter

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**MIDWAY GOLD CORP.**

DATE: November 26, 2012

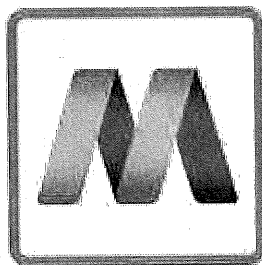
By: /s/ Kenneth A. Brunk  
Kenneth A. Brunk  
Chairman, President and CEO



**EXHIBIT INDEX**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
3.1	Form of Series A Preferred Rights (Amendment)
10.1	Share Purchase Agreement
10.2	Registration Rights Agreement
10.3	Side Letter

## EXHIBIT 3



# MIDWAY GOLD

## Midway Gold Announces US\$70 Million Strategic Financing

November 21, 2012

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (TSX VENTURE:MDW) (NYSE MKT:MDW) is pleased to announce that it has arranged a US\$70 million private placement financing of five year 8% convertible Series A Preferred shares at a price of US\$1.85 per share ("Preferred Shares").\

Kenneth A. Brunk, Midway's Chairman, President and CEO said, "Midway is pleased to welcome lead investor Hale Capital Partners, L.P. as a key strategic financial partner in the pursuit of the Company's goal of becoming a Nevada gold producer in the near term. This is a very important step forward for Midway as we have dramatically reduced financing risk in uncertain times, and have done so without incurring hedging on our future gold production or committing to any security over our assets, all while seeking to minimize equity dilution to our shareholders."

Martin Hale, CEO and Portfolio Manager of Hale Capital Partners, L.P., said, "We have been investors in Midway since 2010 and that history, the quality of the team and properties, and management execution have given us great confidence in supporting the Company."

The conversion price of the Preferred Shares represents a significant premium of 37% to the closing price of the Company's shares on November 20<sup>th</sup>, 2012.

The primary use of proceeds from the private placement will be to advance the Pan heap leach gold project towards production, including the ordering of long-lead time capital equipment, as well as engineering studies to advance the Gold Rock project.

The Private Placement is subject to customary closing conditions and deliverables. Midway anticipates executing final documentation and closing the private placement on or before December 13<sup>th</sup>, 2012.

### Key Terms of the Preferred Shares:

- US\$70 million Offering at a price of US\$1.85 per Preferred Share.
- Each Preferred Share is convertible into Common Shares of the Company on a 1 to 1 basis.
- Holders of the Preferred Shares are entitled to receive an annual, cumulative preferred 8% dividend payable quarterly in cash or common shares, at the Company's option.
- Preferred Shares are redeemable by either the Company or the holders after five years from the date of issuance for cash equal to the conversion price, initially US\$1.85.
- After a period of one year, subject to certain price and volume conditions, the Company may force the conversion of the Preferred Shares to common shares on a 1 to 1 basis.
- Preferred Shares have a liquidation preference equal to 125% of the issue price of the Preferred Shares in connection with certain liquidation events.
- Except as otherwise required by law, the holders of Preferred Shares will be entitled to vote their shares, on an as converted basis, at meetings of the shareholders of the Company.

- Upon common shareholder approval at the next annual general meeting of the Company, the holders of Preferred Shares shall be entitled to nominate and elect a Director of the Company.
- The issuance of common shares below a price of US\$1.85 or repurchase any common shares, requires the consent of a designated Preferred Shareholder.
- No fees or commissions are payable in connection with this placement.
- The investors have been granted registration rights under a Registration Rights Agreement and other rights related to board and committee appointments under a side letter.

Neither the Preferred Shares nor the Common Shares issuable upon exercise of the Preferred Shares or in lieu of cash dividend payments have been registered under the United States Securities Act of 1933, as amended, or the securities laws of any state. The securities may be offered or sold only under exemptions from these registration requirements. This press release does not constitute an offer of securities.

#### ON BEHALF OF THE BOARD

"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

#### About Midway Gold Corp.

Midway Gold Corp. is a precious metals company with a vision to explore, design, build and operate gold mines in a manner accountable to all stakeholders while assuring return on shareholder investments. For more information about Midway, please visit our website at [www.midwaygold.com](http://www.midwaygold.com) or contact R.J. Smith, Vice President of Administration, at (877) 475-3642 (toll-free).

*Neither the TSX Venture Exchange, its Regulation Services Provider (as that term is defined in the policies of the TSX Venture Exchange) nor the NYSE MKT accepts responsibility for the adequacy or accuracy of this release.*

*This press release contains forward-looking statements within the meaning of Canadian and United States securities laws about the Company and its business which may include, but is not limited to, the intended terms of the private placement, closing of the private placement and use of proceeds. Such forward-looking statements and forward-looking information reflect our current views with respect to future use of proceeds and are subject to certain risks, uncertainties and assumptions, including but not limited to risks related to delays in closing, the receipt of regulatory approvals and changes in market conditions. Forward looking statements are statements that are not historical facts and include, but are not limited to, statements about the Company's intended work plans and resource estimates and potential offering of common shares of the Company from time to time. The forward-looking statements in this press release are subject to various risks, uncertainties and other factors that could cause the Company's actual results or achievements to differ materially from those expressed in or implied by forward looking statements. These risks, uncertainties and other factors include, without limitation, risks related to the timing and completion of the Company's intended work plans, risks related to fluctuations in gold prices; uncertainties related to raising sufficient financing to fund the planned work in a timely manner and on acceptable terms; changes in planned work resulting from weather, logistical, technical or other factors; the possibility that results of work will not fulfill expectations and realize the perceived potential of the Company's properties; uncertainties involved in the interpretation of drilling results and other tests and the estimation of gold resources and reserves; the possibility that required permits may not be obtained on a timely manner or at all; the possibility that capital and operating costs may be higher than currently estimated and may preclude commercial development or render operations uneconomic; the possibility that the estimated recovery rates may not be achieved; risk of accidents, equipment breakdowns and labor disputes or other unanticipated difficulties or interruptions; the possibility of cost overruns or unanticipated expenses in the work program; and other factors identified in the Company's SEC filings and its filings with Canadian securities regulatory authorities. Forward-looking statements are based on the beliefs, opinions and expectations of the Company's management at the time they are made, and other than as required by applicable securities laws, the Company does not assume any obligation to update its forward-looking statements if those beliefs, opinions or expectations, or other circumstances, should change.*

## EXHIBIT 4

8-K 1 midway8k\_121212.htm

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

**Date of Report: December 13, 2012**  
(Date of earliest event reported)

**MIDWAY GOLD CORP.**  
(Exact Name of Registrant as Specified in Charter)

**British Columbia, Canada**  
(State or Other Jurisdiction of Incorporation)

**001-33894**  
(Commission File Number)

**98-0459178**  
(IRS Employer Identification No.)

**8310 South Valley Highway, Suite 280**  
**Englewood, Colorado**  
(Address of principal executive offices)

**80112**  
(Zip Code)

Registrant's telephone number, including area code: **(720) 979-0900**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

**Item 1.01 Entry into Material Definitive Agreements**

On December 13, 2012, Midway Gold Corp. ("**Midway**") closed the private placement of Series A Preferred Shares pursuant to the terms of the Share Purchase Agreements, Registration Rights Agreement and Side Letter, each dated November 21, 2012. The material terms of the agreements are described in Item 1.01 of Midway's Form 8-K filed on November 26, 2012 and are incorporated herein by reference.

**Item 3.02 Unregistered Sales of Equity Securities**

On December 13, 2012, Midway closed a US\$70,000,000 private placement of Series A Preferred Shares (the "**Series A Preferred Shares**") to institutional accredited investors, including INV-MID, LLC, EREF-MID II, LLC and HCP-MID, LLC (the "**Investors**").

Midway offered and sold 37,837,838 Series A Preferred Shares at a price of US\$1.85 per share. The Series A Preferred Shares are convertible into common shares of Midway on a one-for-one share basis. An eight percent (8%) annual dividend, compounding monthly, payable quarterly, is payable on the Series A Preferred Shares, the first payment commencing on April 1, 2013 and each dividend payment payable thereafter on the first business day of each quarter commencing on July 2, 2013. The quarterly dividend is payable in cash or in-kind in common shares of Midway at the option of Midway, subject to certain conditions. The Series A Preferred Shares and common shares issuable upon conversion or for in-kind dividend payments are or will be "restricted securities" as defined in Rule 144(a)(3) of the U.S. Securities Act of 1933, as amended (the "**U.S. Securities Act**").

Neither the Series A Preferred Shares nor the common shares issuable upon conversion of or payable as dividends on the Series A Preferred Shares have been registered under the U.S. Securities Act or any state securities laws. The offer and sale of the Series A Preferred Shares was exempt from registration under Section 4(a)(2) and Regulation D Rule 506 of the U.S. Securities Act. The private placement was conducted with limitations on resale and no general solicitation. The Series A Preferred Shares were offered and sold to institutional "accredited investors" (as defined in Rule 501(a) of Regulation D) pursuant to exemptions from such registration requirements.

In connection with the private placement, Midway entered into a Registration Rights Agreement with the Investors, under which Midway will register the Midway common shares issued or issuable upon conversion of the Series A Preferred Shares and upon payment of an in-kind dividend for resale under the U.S. Securities Act. Under the Registration Rights Agreement, Midway has agreed, within 90 days after closing, to use all commercially reasonable efforts to prepare and file with the SEC a registration statement on Form S-3 (or such other form as available if Form S-3 is not available) and a Canadian prospectus covering the resale of all of the common shares issued or issuable upon conversion of the Series A Preferred Shares. Midway will maintain the effectiveness of the registration statement until all such common shares have been sold or may be sold without registration under Rule 144 of the U.S. Securities Act without any limitation as to volume or manner of sale requirements. The Registration Rights Agreement contains customary terms and conditions and does not provide for any specific cash settlement or liquidated damage payments.

**Item 5.02 Departure/Election of Director**

In connection with the provisions of the Side Letter, Nathaniel Klein, a member of Midway's Board of Directors (the "**Board**") and Vice President of Hale Capital Partners, L.P., resigned from the Board effective December 13, 2012.

Midway appointed Martin Hale, President of Hale Capital Partners, L.P., as a director to fill the vacancy on the Board resulting from Nathaniel Klein's resignation. Midway appointed Martin Hale to serve on the Corporate Governance and Nominating Committee, the Compensation Committee and the Budget/Work Plan Committee of Midway's Board.

In connection with the private placement of the Series A Preferred Shares, Midway entered into a Side Letter which provides for the following:

**Nomination Right:** Upon approval of a majority of the holders of common shares of Midway, the Preferred Governance Majority (initially HCP-MID, LLC until the Investors own less than 7,567,568 Series A Preferred Shares, then the holders of a majority of the Series A Preferred Shares) has the right to nominate one (1) director nominee (the “***Preferred Holder Director***”) for election to Midway’s Board to stand for election at each annual or special meeting of shareholders or action by written consent of shareholders at which directors will be elected. Nathaniel Klein will be nominated as the initial the Preferred Holder Director to stand for election to Midway’s Board at the next annual shareholders meeting in 2013. Mr. Klein shall maintain observation rights to the Board until his election to the Board at the next annual general meeting of Midway.

**Budget/Work Plan Committee:** Midway formed a Budget/Work Plan Committee (the “***Budget Committee***”). The Budget Committee consists of three non-executive directors, one of whom is the Preferred Holder Director or appointed by the Preferred Governance Majority, and the Chief Executive Officer (“***CEO***”) of Midway. CEO Kenneth Brunk, Martin Hale, Roger Newell and John Sheridan were appointed to the Budget Committee. The mandate of the Budget Committee is to review and approve the annual business and financing plans and capital and operating budgets (and any modifications of, or deviations from, such plans or budgets). The Budget Committee chair is the CEO. A majority of the members of the Budget Committee shall constitute a quorum for the transaction of business, and the unanimous vote of all members shall be required for all acts and approvals of the Budget Committee. In the event that unanimous approval of the Budget Committee is not obtained for any matter with which the Budget Committee is authorized under its charter, the Preferred Holder Director and the CEO shall cooperate and work together in good faith to resolve any issues that the Budget Committee has identified as an impediment to their unanimous approval. Budget Committee members shall serve until the successors shall be duly designated and qualified. Except with respect to the Preferred Holder Director, any member may be removed at any time, with or without cause, by a majority of the Board then in office. Any vacancy in the Budget Committee occurring for any cause may be filled by a majority of the Board then in office; provided however, that any vacancy created by the death, resignation, removal or disqualification of any Preferred Holder Director shall be filled by an eligible person designated by the Preferred Super Majority (initially, HCP-MID, LLC until the Investors own less than 3,783,784 Series A Preferred Shares, then the holders of a majority of the Series A Preferred Shares) as the Preferred Holder Director standing member of the Budget Committee.

**Committee Appointments:** Martin Hale was appointed to Midway’s Corporate Governance and Nominating Committee, the Compensation Committee and the Budget Committee of Midway’s Board.

### **Item 5.03 Amendments to Articles of Incorporation**

Midway amended its Notice of Articles and Articles by filing a Notice of Alteration with the British Columbia Registry of Corporations on December 13, 2012.

The amended Articles authorize the Series A Preferred Shares in the capital of Midway with certain terms, conditions, and rights (the “***Series A Rights***”). (Terms not defined in this Item 5.03 have the meaning ascribed to them in the Series A Rights.) Material provisions of the Series A Rights are as follows:

**Voting:** Series A Preferred Shares will have the following voting rights:

**Voting at Shareholder Meetings:** Series A Preferred Shares will be entitled to vote, on an as converted basis, at all meetings of Midway’s shareholders, except as otherwise required by law.

- (a) **Approval of Certain Corporate Actions:** The consent or affirmative vote of the Preferred Super Majority (initially HCP-MID, LLC until the Investors own less than 3,783,784 Series A Preferred Shares, then the holders of a majority of the Series A Preferred Shares) is required for Midway to effect any of the following:
  - (i) create a new class or series of shares equal or superior to the shares of such class;



- (ii) redeem or repurchase any shares of Midway except for purchases at cost upon termination of employment;
- (iii) a voluntary or involuntary liquidation, dissolution or winding-up of the affairs of Midway;
- (iv) change the special rights or restrictions attached to the Series A Preferred Shares;
- (v) amend or repeal of any provision of Midway's Notice of Articles or Articles in a manner adverse to the holders of Series A Preferred Shares; or
- (vi) issue any additional Midway common shares or common share equivalents for less than the Conversion Price (initially US\$1.85) applicable to the Series A Preferred Shares; except for any of the following:
  - 1. common shares pursuant to a Stock Split;
  - 2. securities issued upon exercise, conversion or exchange of existing and outstanding securities equivalents on the date hereof;
  - 3. options to acquire common shares (and common shares issuable upon exercise of such options) issued in accordance with any employee incentive stock option plan, or any amendment to a stock option plan, of Midway approved by the shareholders of Midway for Midway's management, directors and employees where the exercise price or conversion price of such options is below the Conversion Price, but is not less than the closing price of the common shares at the time of such grant or issuance; provided, further, that the aggregate of such grants, issuances or sales per calendar year shall not exceed five percent (5%) of the issued and outstanding shares of common shares as of December 31 of such calendar year;
  - 4. common shares issued for the purpose of redeeming in full the Series A Preferred Shares in cash; or
  - 5. up to a maximum of 756,757 common shares to be used exclusively for real property acquisitions, including by way of a joint venture.

**Director Appointment:** Upon approval of a majority of the holders of common shares of Midway, the Preferred Governance Majority (initially HCP-MID, LLC until the Investors own less than 7,567,568 Series A Preferred Shares, then the holders of a majority of the Series A Preferred Shares) have the right to nominate the Preferred Holder Director, to be elected by holders of the Series A Preferred Shares voting as a separate series at each annual or special meeting of shareholders of Midway or action by written consent of shareholders at which directors will be elected. If Midway's Board is increased beyond seven (7) members, increases shall occur in increments of two (2) and the Preferred Governance Majority will have the right to designate one (1) director nominee for election or appointment as director. The Preferred Governance Majority has the right to fill any vacancy of the Preferred Holder Director position. The director appointment rights terminate if there are less than 7,567,568 Series A Preferred Shares issued and outstanding. These rights are subject to approval of the holders of a majority of the common shares of Midway.

**Dividend Rights:** Series A Preferred Shares will be entitled to an annual 8% dividend, compounded monthly and payable quarterly in cash or, at the option of Midway and subject to certain conditions, in Midway common shares. Dividends are payable beginning on April 1, 2013, and thereafter be paid on the first business day of each following quarter, beginning July 2, 2013. Midway may elect to pay dividends in Midway common shares based on the closing price on NYSE MKT the day before the dividend is paid; provided that the issuance is an exempt purchase pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended. No dividend or other distribution greater than the Series A Preferred Dividend will be paid, declared or set apart for payment in respect of any common shares or shares of any other class ranking junior to the Series A Preferred Shares in respect of dividends (and the Series A Preferred Shares are deemed to rank senior to each class of shares that is created before it).

**Liquidation Preference:** Series A Preferred Shares shall have a liquidation preference equal to 125% of the initial issue price of the Series A Preferred Shares in connection with certain liquidation events, including:

- (a) a voluntary or involuntary liquidation, dissolution or winding-up of Midway's affairs;
- (b) any merger, amalgamation, reorganization, arrangement, acquisition or other similar transaction of Midway with another person or entity, pursuant to which the holders of voting securities of Midway immediately prior to the transaction hold (assuming an immediate and maximum exercise/conversion of all derivative securities issued in the transaction), immediately after such transaction, directly or indirectly, less than 50% of the voting power to elect directors of Midway resulting from the transaction (unless not deemed a liquidation event as provided in the Series A Rights);
- (c) a sale, lease, conveyance or other disposition of all or substantially all of the property or business of Midway (directly or through a subsidiary) or the sale of substantially all of the properties, title, or rights related to the properties owned by Midway's U.S. subsidiary or U.S. affiliate in White Pine County, Nevada (unless not deemed a liquidation event as provided in the Series A Rights); or
- (d) Midway common shares are no longer listed or traded on any of the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, Inc., the NYSE MKT LLC, the NASDAQ Global Select Market, the NASDAQ Capital Market or the OTC Bulletin Board.

**Conversion Rights:** Series A Preferred Share have the following conversion terms:

Conversion: Each Series A Preferred Share is convertible into one Midway common share, subject to adjustment for stock splits and capital reorganizations, at any time by the holder of Series A Preferred Shares.

Mandatory Conversion: Midway has the right to force the conversion of the Series A Preferred Shares after 1 year, subject to certain conditions, including, but not limited to: (a) Midway common shares trade on the NYSE MKT or other eligible market above \$3.70, as adjusted for stock splits and recapitalizations, for 20 consecutive trading days; (b) Midway common shares are registered for resale under the U.S. Securities Act or can be resold under Rule 144 without volume limitations; (c) no public announcement has been made of a pending or proposed liquidation event; (d) holders are not in possession of non-public material information; (e) no black-out period restricting the sale of Midway common shares; (f) the issuance is an exempt purchase pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended; (g) issuance of the common shares would not violate the rules of the NYSE MKT; and (h) the number of Series A Preferred Shares subject to the mandatory conversion will be calculated as of the date of the conversion based on the product of (i) the aggregate number of common shares issuable by Midway to all holders of Series A Preferred Shares upon such conversion multiplied by (ii) the average of the dollar volume-weighted average price for such common shares on NYSE MKT during the period beginning at 9:30:01 a.m., New York time and ending at 4:00 p.m., New York time, as reported by Bloomberg through its "Volume at Price" function for each of the twenty (20) consecutive days immediately prior to the conversion shall not exceed 30% of the average of the aggregate dollar trading volume of common stock traded on the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, Inc., the NYSE MKT LLC, the NASDAQ Global Select Market, the NASDAQ Capital Market and the OTC Bulletin Board for the five (5) consecutive trading days for each of the twenty (20) consecutive trading days immediately preceding the applicable conversion.

**Mandatory Redemption:** Five (5) years after the date of issuance, Series A Preferred Shares are redeemable by either Midway or the holders of Series A Preferred Shares for cash at US\$1.85 per share, as adjusted for stock splits and recapitalizations. The redemption payment is payable in legal available funds within 30 days after a redemption notice. If Midway is prohibited from redeeming Series A Preferred Shares, then Midway shall distribute all of the legal available funds to the holders of the Series A Preferred Shares and repay any amounts otherwise due in equal quarterly payments for the period of two (2) years from date on which redemption is demanded.

If the redemption is not completed during the two year period, the Preferred Super Majority may (i) voting as a single class (to the exclusion of the holders of all other securities and classes of capital stock of Midway),

vote to elect such number of additional directors which shall constitute a majority of Midway's Board of Directors, and the number of directors constituting Midway's Board shall automatically be increased as necessary, and (ii) in the event it is not permitted, the Preferred Super Majority may sell, as may be permitted by applicable law, on behalf of Midway the assets of Midway, in its discretion, that are sufficient to redeem the

#### **Item 7.01 Regulation FD**

On December 13, 2012, Midway issued a press release announcing the closing of the private placement. A copy of the press release is attached to this Current Report on Form 8-K as Exhibit 99.1. In accordance with General Instruction B.2 of Form 8-K, the information set forth herein and in the press release is deemed to be "furnished" and shall not be deemed to be "filed" for purposes of the Securities Exchange Act of 1934, as amended. In accordance with General Instruction B.6 of Form 8-K, the information set forth in herein and in the press release shall not be deemed an admission as to the materiality of any information in this Current Report on Form 8-K that is required to be disclosed solely to satisfy the requirements of Regulation FD.

#### **Item 9.01. Exhibits**

- 10.1 Share Purchase Agreement\*
- 10.2 Registration Rights Agreement\*
- 10.3 Side Letter\*
- 3.1 Articles and Notice of Alteration for Series A Rights
- 99.1 Press Release

\* Previously filed on Form 8-K dated November 26, 2012, and incorporated by reference.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**MIDWAY GOLD CORP.**

DATE: December 13, 2012

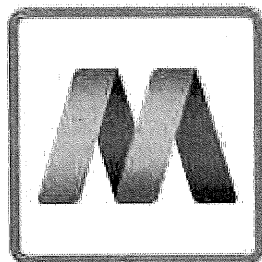
By: /s/ Kenneth A. Brunk  
Kenneth A. Brunk  
Chairman, President and CEO

**EXHIBIT INDEX**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
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10.2	Registration Rights Agreement*
10.3	Side Letter*
3.1	Articles and Notice of Alteration for Series A Rights
99.1	Press Release

\* Previously filed on Form 8-K dated November 26, 2012, and incorporated by reference.

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# MIDWAY GOLD

## Midway Gold Closes US\$70 Million Strategic Financing

December 13, 2012

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (TSX VENTURE: MDW) (NYSE MKT:MDW) is pleased to announce that it has closed its previously announced US\$70 million private placement financing (the "Transaction") of five year 8% convertible Series A Preferred shares at a price of US\$1.85 per share ("Preferred Shares"). Kenneth A. Brunk, Midway's Chairman, President and CEO commented, "Midway is pleased to have reached this significant funding milestone, which allows the Company to focus on finalizing our construction plans for the Pan project and to continue development of the Gold Rock project."

Concurrent with closing, Nathaniel E. Klein, Vice President of Hale Capital Partners, LP ("HCP") has resigned from the Company's board of directors and Martin M. Hale, Jr., CEO and Portfolio Manager of HCP, was appointed to fill the resulting vacancy. Mr. Hale was also appointed to the Company's Corporate Governance and Nominating Committee, Compensation Committee, and Budget/Work Plan Committee.

Prior to founding HCP in 2007, Martin was a founding member of Pequot Ventures (now known as FirstMark Capital) where he served as a member of the General Partner. From 2002 to 2007, Martin was a Managing Director and a Member of the Operating & Investment Committees helping to lead 7 funds with approximately US\$2.2 billion under management. Prior to Pequot Ventures, Martin was an Associate at Geocapital Partners and an Analyst at Broadview International. He currently serves as Chairman of Telanetix, Inc. and is a board member of United Silver Corporation and Adept Technology. He received his B.A. cum laude from Yale University.

In connection with the Transaction, EREF-MID II, LLC ("EREF-MID II") and HCP-MID, LLC ("HCP-MID"), both funds managed by an affiliate of HCP, acquired 17,837,838 Preferred Shares pursuant to share purchase agreements entered into with Midway on November 21, 2012. Midway has been advised by HCP that after giving effect to the Transaction, EREF-MID II, HCP-MID and their respective affiliates, acquired control or direction over a total of 17,837,838 Preferred Shares of Midway, representing approximately 47% of the outstanding Preferred Shares of Midway and further, upon conversion of the Preferred Shares into common shares of Midway (the "Common Shares"), and together with common share purchase warrants currently held by HCP and its affiliates, HCP and its affiliates would hold 27,949,522 Common Shares, representing approximately 15.5% of the issued and outstanding Common Shares on a fully diluted basis (calculated as if all outstanding warrants and options to purchase Common Shares were exercised).

In connection with the Transaction, INV-MID, LLC ("INV-MID") acquired 20,000,000 Preferred Shares pursuant to a share purchase agreement entered into with Midway on November 21, 2012. Midway has been advised by INV-MID that after giving effect to the Transaction, INV-MID acquired control or direction over a total of 20,000,000 Preferred Shares of Midway, representing approximately 53% of the outstanding Preferred Shares of Midway, and further, upon conversion of the Preferred Shares into Common Shares, INV-MID would hold 20,000,000 Common Shares, representing approximately 11% of

the issued and outstanding Common Shares on a fully diluted basis (calculated as if all outstanding warrants and options to purchase Common Shares were exercised).

The primary use of proceeds from the private placement will be to advance the Pan heap leach gold project towards production, including the ordering of long-lead time capital equipment, as well as engineering studies to advance the Gold Rock project.

The Preferred Shares and Common Shares issuable upon conversion of the Preferred Shares are subject to a customary Canadian hold period until April 14, 2013 and are restricted securities under the U.S. Securities Act of 1933, as amended.

Neither the Preferred Shares nor the Common Shares issuable upon conversion of the Preferred Shares or in lieu of cash dividend payments have been registered under the United States Securities Act of 1933, as amended, or the securities laws of any state. Each Preferred Share is convertible into Common Shares of the Company on a 1 to 1 basis. Midway granted the investors registration rights in connection with the offering. The securities may be offered or sold only under exemptions from these registration requirements. This press release does not constitute an offer of securities.

#### **ON BEHALF OF THE BOARD**

"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

#### **About Midway Gold Corp.**

Midway Gold Corp. is a precious metals company with a vision to explore, design, build and operate gold mines in a manner accountable to all stakeholders while assuring return on shareholder investments. For more information about Midway, please visit our website at [www.midwaygold.com](http://www.midwaygold.com) or contact R.J. Smith, Vice President of Administration, at (877) 475-3642 (toll-free).

#### **About Hale Capital Partners**

Based in New York City, Hale Capital Partners has established itself as a leading private equity firm focused on strategic investments in public companies and their subsidiaries. Hale Capital Partners' team is comprised of seasoned private equity veterans and entrepreneurs, who bring not only deep domain expertise but also hands-on operating experience to help build highly successful companies. Hale Capital Partners' mining portfolio spans all stages of mine development from exploration to commercial production.

*Neither the TSX Venture Exchange, its Regulation Services Provider (as that term is defined in the policies of the TSX Venture Exchange) nor the NYSE MKT accepts responsibility for the adequacy or accuracy of this release.*

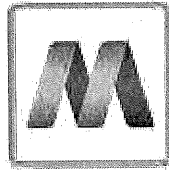
*This press release contains forward-looking statements within the meaning of Canadian and United States securities laws about the Company and its business which may include, but is not limited to, the Company's intended use of proceeds, the ability to complete construction plans for the Pan Project, the plans for development of the Gold Rock Project and other statements that are not historical fact. Such forward-looking statements and forward-looking information reflect our current views with respect to future use of proceeds and are subject to certain risks, uncertainties and assumptions, including but not limited to risks related to delays in closing, the receipt of regulatory approvals and changes in market conditions. The forward-looking statements in this press release are subject to various risks, uncertainties and other factors that could cause the Company's actual results or achievements to differ materially from those expressed in or implied by forward looking statements. These risks, uncertainties and other factors include, without limitation, risks related to the timing and completion of the Company's intended work plans, risks related to fluctuations in gold prices; uncertainties related to raising sufficient financing to fund the planned work in a timely manner and on acceptable terms; changes in planned work resulting from weather, logistical, technical or other factors; the possibility that results of work will not fulfill expectations and realize the perceived potential of the Company's properties; uncertainties involved in the interpretation of*

*drilling results and other tests and the estimation of gold resources and reserves; the possibility that required permits may not be obtained on a timely manner or at all; the possibility that capital and operating costs may be higher than currently estimated and may preclude commercial development or render operations uneconomic; the possibility that the estimated recovery rates may not be achieved; risk of accidents, equipment breakdowns and labor disputes or other unanticipated difficulties or interruptions; the possibility of cost overruns or unanticipated expenses in the work program; and other factors identified in the Company's SEC filings and its filings with Canadian securities regulatory authorities. Forward-looking statements are based on the beliefs, opinions and expectations of the Company's management at the time they are made, and other than as required by applicable securities laws, the Company does not assume any obligation to update its forward-looking statements if those beliefs, opinions or expectations, or other circumstances, should change.*

## EXHIBIT 5



EX-99.1 2 newsrelease.htm PRESS RELEASE, DATED JULY 30, 2013



## MIDWAY GOLD

### **Midway Updates Progress at Pan Project, Nevada**

July 30, 2013

Denver, Colorado – Midway Gold Corp. (TSX and NYSE-MKT: MDW) (the “Company”) reports that the Company’s Pan heap leach gold project (“Pan”) is on schedule for construction in Q4 2013 and production in 2014. Permitting, financing, and engineering optimization continue to advance on schedule. For the financing discussions, an updated feasibility study will incorporate optimization and detailed engineering conducted after the November 2011 Feasibility. The revised FS with updated costs is expected in Q3.

#### **A Message from Ken Brunk – Chairman, President and CEO of Midway**

Time flies when one is busy! It has been several months since we have updated our shareholders and other interested followers of Midway on our activities and progress. We have been extremely busy permitting, updating the Pan project technical and financial information, evaluating details within the heap leach operating parameters, conducting a trial blast to get rock breakage and powder factor confirmation, performing additional large scale, 25-ton leach tests, optimizing the mine plan and dig plans, re-evaluating the operating costs, re-visiting the capital costs, improving the construction plan and schedule, performing in-depth risk analyses of every aspect of the project and examining financing alternatives for the balance of funding needed to bring the project to production in August of 2014.

You might ask, “Why all this activity for a project with already impressive economics?” The answer is simple; it is our goal to optimize our cost parameters in order to deliver better returns to our shareholders, especially in the current environment.

The most significant event for Midway will be the creation of profitable cash flow from the Pan Mine. Planning for the creation of this cash flow stream began over three years ago with the design of a plan to develop the Pan project into a producing facility. We have been operating on that plan since April 2010. We are within three

weeks of that original schedule and production for Pan is within six weeks of the original target. That does not mean that every internal segment of the schedule has seen no variance; it does mean that the overall schedule has been managed such that we expect to pour gold in August of 2014. I believe that such performance speaks well for the team.

We will issue an updated feasibility study and an updated 43-101 Technical Report on the results of our work in the coming weeks. I am confident that the update will provide a level of comfort that Pan remains a good project. The attributes of nearby infrastructure, easy mining, simple metallurgy, solid engineering, a seasoned operating team and 60 plus million dollars in the bank all contribute toward the project's success. Let's discuss some of the aspects of the project in a bit more detail.

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## Permitting

We are still on our schedule for the achievement of a favorable record of decision in September of this year. That schedule allows construction to commence in October. The BLM's third party contractor is currently addressing comments and responses received from the Draft Environmental Impact Statement (EIS) public comment period. These comments will be included in the Final EIS. Major permits received to date include the *Water Pollution Control* permit and the *Class I Air Quality Operating Permit to Construct*. While Midway anticipates no Mercury emissions, a *Class I Operating Permit to Construct: Mercury* is required and is expected to be complete in the near future.

## Metallurgical Test Work & First Blast at Pan

Post-feasibility metallurgical test work at Pan has focused on ways to reduce the number of stages of crushing needed thereby delaying the crusher capital expenditures. Large column tests on bulk samples showed excellent gold recoveries from coarse materials. The preliminary results indicate that gold recoveries are less sensitive to crush size than was outlined in the 2011 Feasibility Study. In June of this year, the Company conducted the first blast at Pan to obtain material for tests of Run of Mine potential. This also provided a test of the blast pattern, powder factor, and sampling procedures planned for use during initial mining. The Run of Mine metallurgical testing is still in progress.

## Pan Project Financing Update

Midway is pursuing a combination of project and equipment financing alternatives, and has received proposals from several major commercial funding sources. The Company has been working with its financial advisors to assess the amount of financing needed and the various options available in the current market to secure the remaining capital necessary to fund Pan to cash flow. The current finance plan does not consider issuing additional equity that would dilute current shareholders. Accordingly, Midway terminated the September 23, 2011 "At-the-Market" share issuance program effective July 29, 2013.

## Pan Updated Feasibility

The company is updating the 2011 Pan Feasibility Study for use in financing negotiations and in forward planning for internal purposes. The update will incorporate post-feasibility optimization changes to the mine plan and will bring feasibility costs up to date. The project timeline for Pan is still on track for Q4 construction and production in 2014.

This release has been reviewed and approved for Midway by William S. Neal (M.Sc., CPG), Vice President of Geological Services of Midway, a "qualified person" as that term is defined in NI 43-101.

## ON BEHALF OF THE BOARD

"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

### **About Midway Gold Corp.**

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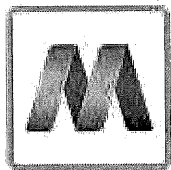
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Cautionary note to U.S. investors concerning estimates of reserves and resources: This press release and the documents referenced in this press release use the terms "reserve" and "mineral resource", which are terms defined under Canadian National Instrument 43-101 and the Canadian Institute of Mining and Metallurgy Classification system. Such definitions differ from the definitions in U.S. Securities and Exchange Commission ("SEC") Industry Guide 7. Under SEC Industry Guide 7 standards, a "final" or "bankable" feasibility study is required to report reserves, the three-year historical average price is used in any reserve or cash flow analysis to designate reserves and the primary environmental analysis or report must be filed with the appropriate governmental authority. Mineral resources are not mineral reserves and do not have demonstrated economic viability. The SEC normally only permits issuers to report mineralization that does not constitute SEC Industry Guide 7 compliant "reserves" as in-place tonnage and grade without reference to unit measures. The references to a "resource" in this press release and the documents referenced in this press release are not normally permitted under the rules of the SEC. It cannot be assumed that all or any part of mineral deposits in any of the above categories will ever be upgraded to Guide 7 compliant reserves. Accordingly, disclosure in this press release and in the technical reports referenced in this press release may not be comparable to information from U.S. companies subject to the reporting and disclosure requirements of the SEC.

## EXHIBIT 6

EX-99.1 2 newsrelease.htm PRESS RELEASE, DATED SEPTEMBER 17, 2013



## MIDWAY GOLD

### IMPRESSIVE RUN-OF-MINE TEST RESULTS AT MIDWAY'S PAN PROJECT, NEVADA

September 17, 2013

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (MDW:TSX, MDW:NYSE-MKT) reports positive preliminary results from metallurgical test work on run-of mine (ROM) bulk samples at Pan. Observed gold recoveries of 92% after 58 days indicate gold recovery of the South Pan ore is not sensitive to crush size. These metallurgical results suggest the South Pan ore can be processed with ROM leaching and that a crusher installation and spend at Pan can be deferred for at least 18 to 24 months.

Ken Brunk, President and CEO of Midway states, "We are very excited by these new ROM test results. We saw indications in the 2010 pre-feasibility and 2011 feasibility column testing of South Pan ores that gold recovery seemed insensitive to crush size. However, due to permitting constraints we were unable to begin comprehensive ROM test work. Therefore, we elected to include crushers in the initial project, as we will need them for the North Pit ore regardless of South Pit design factors.

Since the November 2011 feasibility, we have continued to permit and test bulk samples of larger and larger particle size with favorable results. Our permitting team obtained permission from the BLM to conduct a trial blast in July at South Pan from which we could obtain true ROM ore for testing. Representative samples of the blasted ore were sent to Kappes-Cassidy & Associates (KCA) laboratories in Reno for leaching in large columns to simulate a ROM leaching operation. The duplicate 4 feet diameter columns are stacked with approximately 20,000 pounds of ROM ore each to a height of 15 feet and have already resulted in a gold recovery of 92% at 58 days. These excellent leaching results and leach kinetics are due to the fact that the rock is porous and permeable. In other words, the rock readily allows the leach solution to flow through the ore and to easily dissolve the gold.

The results of the large column tests lead the project team and management to conclude that ROM leaching is a viable option for South Pan. The excellent extraction of gold from the large-scale bulk sample also supports retaining the 85% recovery that is now confirmed by all the detailed test work to date. The size analysis of the large column test feed material is consistent with, and perhaps a bit coarser, than that from my experience with other ROM leaches on Carlin style formations. Midway will work with these large column results and use them to further refine our Pan project. Continued optimization of the mine plan will occur to ultimately dictate when the crushers will be needed."

#### Test Details

Figure 1 below is a graph showing the gold recoveries from feasibility study and pre-feasibility study metallurgical test work. It shows that the percent gold recovery is essentially the same for particle sizes from one-half inch in size to 7 inches in size. These results were obtained from column leaching of drill core and from bulk samples gathered from backhoe-dug trenches on site.

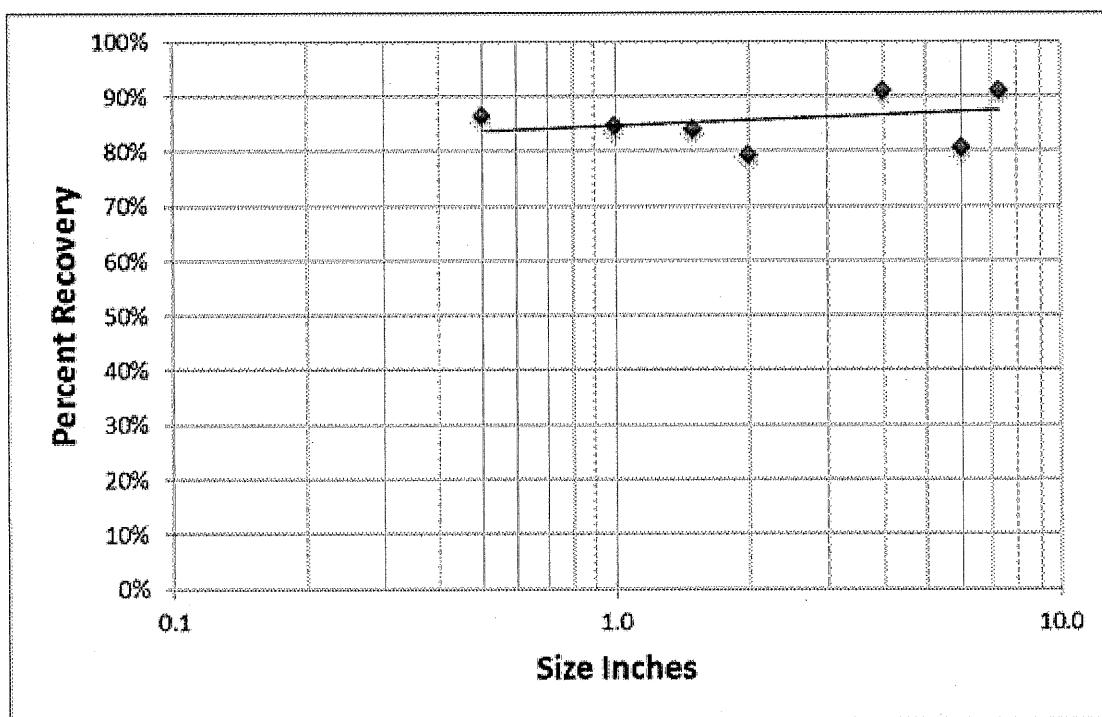
Figure 2 shows the current in-progress gold recovery from the ROM tests that are being run at KCA labs. These tests are still leaching and will remain for approximately another 60 days to allow for the collection of additional design information. The particle size of the ore in the test columns ranges from 24 inches to less than 0.1 inches. The P-80 is 7.3 inches. This means that 80% of the ore is 7.3 inches or less in size. Also, only 15% the rock in the test columns is less than 0.1 inches. Test results are preliminary and final results could vary once final tailings are assayed.

### Other Project Updates

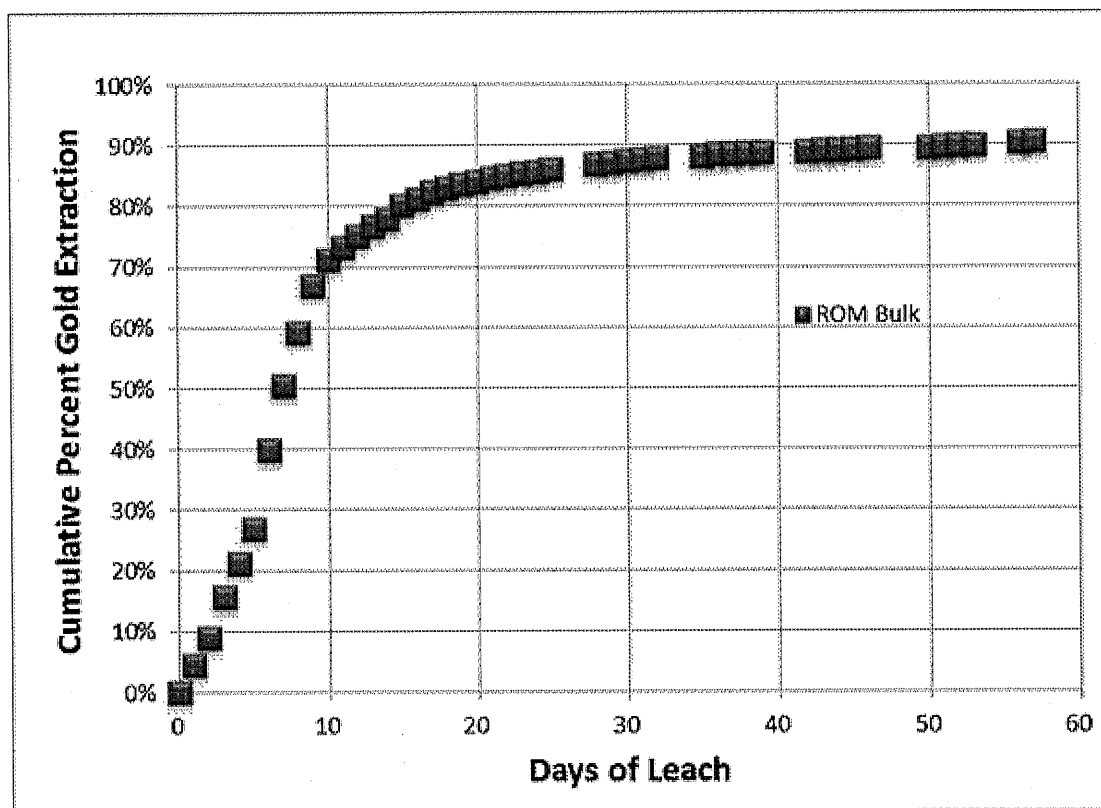
The Pan project is in the final stages of the NEPA process. A Record of Decision is expected before year-end, which will be followed 30 days later by construction. Midway is targeting startup of operations in the third quarter of 2014.

Midway has engaged Sierra Partners as a financial advisor to evaluate and guide the Company in putting in place the balance of the financing needed to construct the Pan project. At the end of the second quarter the Company had a cash position of \$65.8M and expects to have the remaining financing in place by year-end.

**Figure 1. Pan South Area Gold Recoveries vs. Crush Size**





**Figure 2. Recovery vs. Leach Cycle in Days****Pan Gold Project, Nevada**

The Pan project is an oxidized, Carlin-style gold deposit mineable by shallow open pit methods and treatable by heap leaching. A Feasibility Study was completed in November 2011. It shows the NPV of the project is robust at a range of gold prices, ranging from \$123 million at \$1,200/oz gold to \$344 million \$1,900/oz gold. The IRR grows from 32% to 79% using the same gold price range. Both are after-tax figures (see press release dated November 15, 2011.)

This release has been reviewed and approved for Midway by Deepak Molhatra (PhD Mineral Economics, MS Metallurgical Engineering), President of Resource Development, Inc., and a "qualified person" as that term is defined in NI 43-101.

**ON BEHALF OF THE BOARD**

"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

**About Midway Gold Corp.**

Midway Gold Corp. is a precious metals company with a vision to explore, design, build and operate gold mines in a manner accountable to all stakeholders while assuring return on shareholder investments. For more information about Midway, please visit our website at [www.midwaygold.com](http://www.midwaygold.com) or contact Jaime Wells, Investor Relations Analyst, at (877) 475-3642 (toll-free).

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*Cautionary note to U.S. investors concerning estimates of reserves and resources: This press release and the documents referenced in this press release use the terms "reserve" and "mineral resource", which are terms defined under Canadian National Instrument 43-101 and the Canadian Institute of Mining and Metallurgy Classification system. Such definitions differ from the definitions in U.S. Securities and Exchange Commission ("SEC") Industry Guide 7. Under SEC Industry Guide 7 standards, a "final" or "bankable" feasibility study is required to report reserves, the three-year historical average price is used in any reserve or cash flow analysis to designate reserves and the primary environmental analysis or report must be filed with the appropriate governmental authority. Mineral resources are not mineral reserves and do not have demonstrated economic viability. The SEC normally only permits issuers to report mineralization that does not constitute SEC Industry Guide 7 compliant "reserves" as in-place tonnage and grade without reference to unit measures. The references to a "resource" in this press release and the documents referenced in this press release are not normally permitted under the rules of the SEC. It cannot be assumed that all or any part of mineral deposits in any of the above categories will ever be upgraded to Guide 7 compliant reserves. Accordingly, disclosure in this press release and in the technical reports referenced in this press release may not be comparable to information from U.S. companies subject to the reporting and disclosure requirements of the SEC.*

## EXHIBIT 7

EX-99.1 2 newsrelease.htm PRESS RELEASE, DATED DECEMBER 20, 2013



MIDWAY GOLD

## **MIDWAY GOLD COMPLETES PERMITTING – RECEIVES RECORD OF DECISION PAN PROJECT, NEVADA**

December 20, 2013

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (MDW:TSX, MDW:NYSE-MKT) announces receipt of a December 20, 2013 signed Record of Decision (ROD) on the Final Environmental Impact Statement (EIS) for the Pan gold project, White Pine County, Nevada. The ROD signifies full completion of the required NEPA and EIS process. The ROD represents the final step in the federal permitting process and allows construction to begin.

"We are permitted at Pan. This is truly a groundbreaking accomplishment for Midway Gold and a great Christmas present for all who have been a part of the Midway story over the past few years," said Ken Brunk, Midway's President & CEO. "We advanced from the Notice of Intent to the Record of Decision in a record 20 months. We would like to thank everyone here at Midway, especially our permitting team, for a job very well done. We respect the professionalism of the cooperating agencies and their effectiveness to complete the process in a timely manner. We would also like to thank the local communities and, of course, our shareholders for the endless support. We are very excited to have completed this permitting process and are ready to begin construction!"

### **What is the NEPA and the EIS Process?**

The Environmental Impact Statement (EIS) for the Pan project is required under the National Environmental Policy Act (NEPA). The act sets up procedural requirements for all federal governmental agencies to prepare environmental assessments and environmental impact statements in response to proposed major activities on federal lands. The Pan project is on federal land administered by the Bureau of Land Management (BLM). Therefore, NEPA requires the BLM to prepare an EIS to analyze potential environmental consequences of the planned project and any reasonable alternatives. Midway has advanced through baseline studies, the Draft EIS,

the Final EIS, and has now completed the process with the **Record of Decision**. Numerous state permits are also required and have been obtained from various state agencies.

### **Pan Gold Project, Nevada**

The Pan project is a low cost, oxidized, Carlin-style gold deposit mineable by shallow open pit methods and treatable by heap leaching. A Feasibility Study was completed in November 2011. It shows the NPV of the project is robust at a range of gold prices, ranging from \$123 million at \$1,200/oz gold to \$344 million \$1,900/oz gold. The IRR grows from 32% to 79% using the same gold price range. Both are after-tax figures (see press release dated November 15, 2011.)

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**ON BEHALF OF THE BOARD****"Kenneth A. Brunk"**

Kenneth A. Brunk, Chairman, President and CEO

**About Midway Gold Corp.**

Midway Gold Corp. is a precious metals company with a vision to explore, design, build and operate gold mines in a manner accountable to all stakeholders while assuring return on shareholder investments. For more information about Midway, please visit our website at [www.midwaygold.com](http://www.midwaygold.com) or contact Jaime Wells, Investor Relations Analyst, at (877) 475-3642 (toll-free).

*Neither the TSX Exchange, its Regulation Services Provider (as that term is defined in the policies of the TSX Exchange) nor the NYSE MKT accepts responsibility for the adequacy or accuracy of this release. This press release contains forward-looking statements about the Company and its business. Forward looking statements are statements that are not historical facts and include, but are not limited to, statements about the Company's intended work plans and resource estimates and potential offering of common shares of the Company from time to time. The forward-looking statements in this press release are subject to various risks, uncertainties and other factors that could cause the Company's actual results or achievements to differ materially from those expressed in or implied by forward looking statements. These risks, uncertainties and other factors include, without limitation, risks related to the timing and completion of the Company's intended work plans, risks related to fluctuations in gold prices; uncertainties related to raising sufficient financing to fund the planned work in a timely manner and on acceptable terms; changes in planned work resulting from weather, logistical, technical or other factors; the possibility that results of work will not fulfill expectations and realize the perceived potential of the Company's properties; uncertainties involved in the interpretation of drilling results and other tests and the estimation of gold resources and reserves; the possibility that required permits may not be obtained on a timely manner or at all; the possibility that capital and operating costs may be higher than currently estimated and may preclude commercial development or render operations uneconomic; the possibility that the estimated recovery rates may not be achieved; risk of accidents, equipment breakdowns and labor disputes or other unanticipated difficulties or interruptions; the possibility of cost overruns or unanticipated expenses in the work program; and other factors identified in the Company's SEC filings and its filings with Canadian securities regulatory authorities. Forward-looking statements are based on the beliefs, opinions and expectations of the Company's management at the time they are made, and other than as required by applicable securities laws, the Company does not assume any obligation to update its forward-looking statements if those beliefs, opinions or expectations, or other circumstances, should change.*

## EXHIBIT 8

EX-99.1 2 newsrelease.htm PRESS RELEASE, DATED JANUARY 15, 2014



MIDWAY GOLD

## **MIDWAY BREAKS GROUND AT PAN GOLD PROJECT, NEVADA**

January 15, 2014

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (MDW:TSX, MDW:NYSE-MKT) holds a formal groundbreaking ceremony at the site of the Pan Project, White Pine County, Nevada. The project is fully permitted and construction is underway with completion estimated for Q3 2014. A Record of Decision from the BLM signed on December 20, 2013 completed the EIS process. Bonding for construction and mining is in place. Equipment has been mobilized to site and earth works are in progress. The power line to site has been permitted and construction has begun.

"This groundbreaking ceremony is the kick off for building the Pan mine," said Ken Brunk, Midway's President & CEO. "It is an opportunity for us to acknowledge those who drove the process from exploration through permitting and development. Many times, we have expressed our thanks to our permitting team and today is one more valuable opportunity to do so. Without their hard work and commitment to both excellent science and schedule we would not be where we are today. Additionally, we are proud to recognize Mr. Alan Branham, former president and CEO of Midway, for his leadership in acquiring the Pan project for Midway and for his vision that Pan would one day become a mine."

### **Pan Gold Project, Nevada**

The Pan project is a low cost, oxidized, Carlin-style gold deposit mineable by shallow open pit methods and treatable by heap leaching. A Feasibility Study was completed in November 2011. It shows the NPV of the project is robust at a range of gold prices, ranging from \$123 million at \$1,200/oz gold to \$344 million at \$1,900/oz gold. The IRR grows from 32% to 79% using the same gold price range. Both are after-tax figures (see press release dated November 15, 2011.)

### **ON BEHALF OF THE BOARD**

"Kenneth A. Brunk"



Kenneth A. Brunk, Chairman, President and CEO

**About Midway Gold Corp.**

Midway Gold Corp. is a precious metals company with a vision to explore, design, build and operate gold mines in a manner accountable to all stakeholders while assuring return on shareholder investments. For more information about Midway, please visit our website at [www.midwaygold.com](http://www.midwaygold.com) or contact Jaime Wells, Investor Relations Analyst, at (877) 475-3642 (toll-free).

*Neither the TSX Exchange, its Regulation Services Provider (as that term is defined in the policies of the TSX Exchange) nor the NYSE MKT accepts responsibility for the adequacy or accuracy of this release. This press release contains forward-looking statements about the Company and its*

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*business. Forward looking statements are statements that are not historical facts and include, but are not limited to, statements about the Company's intended work plans and resource estimates and potential offering of common shares of the Company from time to time. The forward-looking statements in this press release are subject to various risks, uncertainties and other factors that could cause the Company's actual results or achievements to differ materially from those expressed in or implied by forward looking statements. These risks, uncertainties and other factors include, without limitation, risks related to the timing and completion of the Company's intended work plans, risks related to fluctuations in gold prices; uncertainties related to raising sufficient financing to fund the planned work in a timely manner and on acceptable terms; changes in planned work resulting from weather, logistical, technical or other factors; the possibility that results of work will not fulfill expectations and realize the perceived potential of the Company's properties; uncertainties involved in the interpretation of drilling results and other tests and the estimation of gold resources and reserves; the possibility that required permits may not be obtained on a timely manner or at all; the possibility that capital and operating costs may be higher than currently estimated and may preclude commercial development or render operations uneconomic; the possibility that the estimated recovery rates may not be achieved; risk of accidents, equipment breakdowns and labor disputes or other unanticipated difficulties or interruptions; the possibility of cost overruns or unanticipated expenses in the work program; and other factors identified in the Company's SEC filings and its filings with Canadian securities regulatory authorities. Forward-looking statements are based on the beliefs, opinions and expectations of the Company's management at the time they are made, and other than as required by applicable securities laws, the Company does not assume any obligation to update its forward-looking statements if those beliefs, opinions or expectations, or other circumstances, should change.*

## EXHIBIT 9



MIDWAY GOLD

CORPORATE HEADQUARTERS  
8310 S Valley Highway, Suite 280, Englewood, CO 80112  
720.979.0900

## MIDWAY FORECASTS CAPITAL REDUCTIONS PAN PROJECT, NEVADA

April 24, 2014

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (MDW:TSX, MDW:NYSE-MKT) is pleased to provide an update on recent developments and scope changes at the Pan Project including potential reduction in pre-production capital requirements. Construction at Pan remains on-track for initial production in 2014.

"We are excited by our progress at Pan," said Ken Brunk CEO and President. "Our team has worked diligently during the last few months to advance our first project through construction while also finding ways to cut our costs. We believe we can significantly reduce our borrowing needs by employing two significant scope changes to the project—the utilization of a contract miner for early years of mining, and leaching the South Pan ore body by run-of-mine methods thereby deferring the purchase and installation of a crusher plant. We are also fortunate to have had our construction contracts that have been let to date come in at or very close to our feasibility estimates. With these recent reductions in initial capital requirements and our current strong cash balance, we look forward to completing project financing within the coming weeks. We are pleased that the third party engineers that have evaluated the project on behalf of potential lenders have found no "fatal flaws" in any of these approaches or with the project."

### RECENT PROJECT SCOPE CHANGES

NYSE MKT: MDW TSX: MDW MIDWAYGOLD.COM

CONTACT 720.979.0900



### Transition to Contract Mining

Midway has elected to pursue contract mining in the initial years at Pan. Midway had planned to pursue owner mining (as referenced in the 2011 Feasibility Study). However, conditions in the mining industry have led to an increasingly attractive price environment for contract mining. A mining contractor will provide all mining-related services, manpower and equipment for the Pan Project. They will be directly responsible for drilling, blasting, loading, and hauling ore to the leach pad for processing by Midway. Contract mining reduces the initial capital requirements for Pan by deferring purchase of the planned mine fleet. It also minimizes initial start-up and operational risks.

### Elimination of Crushing in Initial Mine Years

The Company has elected to defer purchase and installation of crushers for the first 2-3 years of the mine life at Pan. The November 2011 Feasibility Study included a 2-stage crushing circuit at South Pan. Detailed metallurgical tests confirm this ore responds favorably to run-of-mine leaching. Deferral of crushing circuit equipment and installation is expected to reduce initial capital expenditures. There is also potential to lower operating costs associated with the deferral of the crushers. Midway is currently evaluating the extent of such potential savings.

### PROJECT FINANCING

Midway is currently well funded with \$48M in cash as of December 31, 2013. Construction progress remains on track for 2014 gold production at Pan. Project financing is well advanced and expected to be complete in the second quarter of 2014. Financing is being designed to retain gold price upside for our shareholders. Midway is striving to maximize returns on capital invested and return on equity, and has evaluated a variety of debt financing alternatives, both traditional and non-

April 24, 2014



traditional. In depth, third party due diligence for the Pan project has resulted in a determination of no "fatal flaws" for prospective lenders.

Pan Gold Project, Nevada

The Pan project is a low cost, oxidized, Carlin-style gold deposit mineable by shallow open pit methods and treatable by heap leaching.

This release has been reviewed and approved for Midway by Rick Moritz a "qualified person" as that term is defined in NI 43-101.

ON BEHALF OF THE BOARD

"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

About Midway Gold Corp.

Midway Gold Corp. is a precious metals company with a vision to explore, design, build and operate gold mines in a manner accountable to all stakeholders while assuring return on shareholder investments. For more information about Midway, please visit our website at [www.midwaygold.com](http://www.midwaygold.com) or contact Jaime Wells, Investor Relations Analyst, at (877) 475-3642 (toll-free).

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

DANIEL E. WOLFUS,

Appellant,

v.

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,

Respondents,

---

DANIEL E. WOLFUS,

Appellant,

v.

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,

Respondents,

---

**Supreme Court No. 80613**

District Court No. A-17-756971-B

Consolidated with:

**Supreme Court No. 80949**

## **INDEX TO APPELLANT'S OPENING BRIEF APPENDIX**

### **VOLUME II OF IV**

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

SAMUEL T. REES, ESQ.  
Admitted Pro Hac vice  
26 Muirfield Place  
New Orleans, LA 70131  
(213) 220-9988  
streesesq@earthlink.net

Attorneys for Appellant, DANIEL E. WOLFUS



<b>Document</b>	<b>Page No.</b>
<b>Volume I:</b>	
Complaint for Damages.....	AA001-135
First Amended Complaint for Damages.....	AA136-250
<b>Volume II:</b>	
First Amended Complaint for Damages.....	AA251-269
Acceptance of Service.....	AA270-271
Acceptance of Service.....	AA272-273
Acceptance of Service.....	AA274
Order Granting Defendants’ Motions to Dismiss Amended Complaint Without Prejudice.....	AA275-288
Notice of Entry of Order Granting Defendants’ Motions to Dismiss Amended Complaint Without Prejudice.....	AA289-305
Second Amended Complaint.....	AA306-451
D&O Defendants’ Motion to Dismiss Second Amended Complaint....	AA452-500
<b>Volume III:</b>	
D&O Defendants’ Motion to Dismiss Second Amended Complaint....	AA501-559
Kenneth A. Brunk’s Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants’ Motion to Dismiss Second Amended Complaint.....	AA560-577
Motion to Dismiss and Joinder to D&O Defendants’ Motion to Dismiss Second Amended Complaint.....	AA578-604

Consolidated Memorandum of Points and Authorities in Opposition  
To Motions to Dismiss Plaintiff's Second Amended Complaint.....AA605-651

Reply in Support of D&O Defendants' Motion to Dismiss Second  
Amended Complaint.....AA652-671

Kenneth A. Brunk's Reply in Support of Motion to Dismiss Second  
Amended Complaint and Joinder in D&O Defendants' Reply in  
Support of Motion to Dismiss Second Amended Complaint..... AA672-681

Reply in Support of Motion to Dismiss and Joinder to D&O  
Defendants' Reply in Support of Motion to Dismiss Second  
Amended Complaint..... AA682-691

Recorder's Transcript of Hearing All Pending Motions May 9, 2018... AA692-733

Order Regarding Defendants' Motions to Dismiss Second Amended  
Complaint.....AA734-743

Notice of Entry of Order Regarding Defendants' Motions to Dismiss  
Second Amended Complaint.....AA744-750

#### **Volume IV:**

Notice of Entry of Order Regarding Defendants' Motions to Dismiss  
Second Amended Complaint ..... AA751-756

Order Granting Petition for Writ of Prohibition.....AA757-783

Notice in Lieu of Remittitur.....AA784

Writ of Prohibition.....AA785-789

Order Granting Defendants' Motions to Dismiss Second Amended  
Complaint.....AA790-801

Notice of Entry of Order Granting Defendants' Motions to Dismiss  
Second Amended Complaint..... AA802-816

Notice of Appeal.....AA817-819

Judgment.....	AA820-821
Notice of Entry of Judgment.....	AA822-826
Amended Notice of Appeal.....	AA827-829
Notice of Appeal.....	AA830-832

# EXHIBIT 10

EX-99.1 2 newsrelease.htm PRESS RELEASE, DATED MAY 22, 2014

**MIDWAY GOLD**

CORPORATE HEADQUARTERS  
8310 S. Wiley Highway, Suite 280, Englewood, CO 80112  
720.979.0900

 A NEW YORK STOCK EXCHANGE LISTED COMPANY

**MIDWAY EXECUTES COMMITMENT LETTER  
FOR US\$55 MILLION PROJECT FINANCE FACILITY WITH COMMONWEALTH  
BANK OF AUSTRALIA  
PAN PROJECT, NEVADA**


May 22, 2014

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (MDW:TSX, MDW:NYSE-MKT) announces the signing of a binding commitment letter with Commonwealth Bank of Australia ("Commonwealth Bank") for a US\$55 million 3-year senior secured project finance facility (the "Loan Facility") for the development of the Company's 100%-owned Pan Gold Mine in White Pine County, Nevada. Closing is expected to occur by the end of June 2014.

The Loan Facility is comprised of two tranches, a project finance facility of US\$45 million plus a cost overrun facility of US\$10 million. Advances under the project finance facility will bear interest at LIBOR plus 3.5% to 3.75%, and advances under the cost overrun facility will bear interest at the project finance facility rate plus 2%.

Ken Brunk, President and CEO of Midway, states, "We are pleased to be able to announce this major milestone for our Company and to have Commonwealth Bank as a new financial partner as we work toward gold production and positive cash flow. Our progress to date through permitting and financing speaks to the high quality of our first project and we look forward to achieving the highest return we can for our shareholders. We would like to thank our employees for their continued hard work and our shareholders and local community members for their support through this extensive process. We have committed approximately \$21 million to project construction to date and the build out is about 20% complete."

NYSE MKT: MDW // TSX: MDW // MIDWAYGOLD.COM

CONNECT 

May 19, 2014

**Additional Loan Facility Information**

The Loan Facility is subject to completion of loan and security documentation and customary conditions precedent to closing, and will be secured by substantially all of the assets of the borrower (MDW Pan LLP, which is comprised solely of the Pan Project) and its affiliates. Upon achieving economic completion and meeting certain other requirements, security will be limited to the assets of MDW Pan LLP and guarantees from the Company and an affiliate. Closing is expected to occur at the end of June 2014.

A condition precedent to draw on the loan is the establishment of an un-margined hedging program through Commonwealth Bank, which provides downside protection for the Company's debt. This program will cover a period of less than two years commencing approximately six months after the planned start of production and is expected to comprise an estimated 11% of the Project's anticipated life-of-mine production based on the current reserve base (See November 2011 Resource Estimate) assuming a spot gold price of approximately \$1300/oz.

**About Pan**

The Pan project is a low cost, oxidized, Carlin-style gold deposit mineable by shallow open pit methods and treatable by heap leaching. A feasibility study was completed in November 2011. The project is fully permitted (December 2013) and is currently under construction.

This release has been reviewed and approved for Midway by Dave Mosch, Corporate Mining Engineering at Midway and a "qualified person" as that term is defined in NI 43-101.

May 19, 2014

**ON BEHALF OF THE BOARD**"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

**About Midway Gold Corp.**

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# EXHIBIT 11



## **TOLLING AGREEMENT**

This Tolling Agreement (the "Agreement") is made and entered into as of June 2, 2016 (the "Effective Date"), by and between Daniel E. Wolfus and George Hawes, as well as the individuals and entities which have assigned their claims to Mr. Wolfus or Mr. Hawes, respectively (collectively referred to herein as "Plaintiffs") on the one hand, and Kenneth A. Brunk, Richard Moritz, Brad Blacketer, Timothy Haddon, Martin Hale, Trey Anderson, Richard Sawchak, Frank Yu, John Sheridan, Roger Newell, Rodney Knutson, and Nathaniel Klein (referred to jointly and/or severally as the "Midway Directors and Officers") on the other hand. The Plaintiffs and the Midway Directors and Officers are collectively referred to herein as the "Parties," or individually as a "Party."

**WHEREAS**, on March 29, 2016 counsel for the Plaintiffs sent a draft complaint to the Midway Directors and Officers setting forth a number of claims related to the public filings and management of Midway Gold (the "Draft Complaint"), and

**WHEREAS**, the Parties deem it to be in their mutual benefit that Plaintiffs' claims, including, but not limited to, those set forth in the Draft Complaint, and any counterclaims available against the Plaintiffs, not be asserted in litigation at the present time, and

**WHEREAS**, the Parties desire to encourage resolution and/or such further review or disposition of Plaintiffs' Claims and/or any Claims by the Midway Directors and Officers as may result in a confidential settlement and are willing to make the stipulations, covenants and agreements hereinafter set forth in order to defer and postpone the commencement of litigation, and

**WHEREAS**, the Parties desire that for the period of this Agreement, they should be able to consider issues relating to the possibility of settling disputes without regard to the time constraints that exist because of any future expiration of any applicable statute of limitations;

**NOW, THEREFORE**, in consideration of the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

1. As used in this Agreement, the following terms shall have the following meanings:

- a) "Claims" shall mean any and all claims and/or causes of action, if any, known or unknown, Plaintiffs may have against the Midway Directors and Officers in connection with their participation in the public filings by and the management and operation of Midway Gold and its affiliated entities including, but not limited to, those set forth in the Draft Complaint, and any claims and/or causes of action, if any, known or unknown, the Midway Directors and Officers may have against Plaintiffs in connection with Plaintiffs' conduct, management, operation, and/or purchases or sales of securities of Midway Gold and its affiliated entities.
- b) "Tolling Period" shall mean the period from and including the Effective Date of this Agreement until and including the Expiration Date (as defined below) of this Agreement.
- c) "Expiration Date" shall mean the earlier of **September 25, 2016**, or 30 days from the date that written notice of termination of this Agreement has been served by either of the Parties on the other in accordance with paragraph 10 of this Agreement.
- d) "Timing Defenses" shall mean and include, and shall be limited to, any affirmative defenses to any Party's Claims that another Party may have to the extent based upon (1) any statute of limitations, (2) laches, and/or (3) any failure by a Party to institute or commence litigation or other legal proceedings within some specified period, before a specified date, or before the happening of a specified event.

2. The Plaintiffs and the Midway Directors and Officers stipulate, covenant and agree that Timing Defenses applicable to the Claims shall be tolled during the Tolling Period.

3. The Plaintiffs and the Midway Directors and Officers stipulate, covenant, and agree that this Agreement shall have no effect on any Timing Defenses that may have lapsed prior to the Effective Date, and that all time periods prior to the Effective Date and after the Expiration Date

(and prior to the filing of any lawsuit or other legal proceeding by Plaintiffs subject to paragraph 5 of this Agreement) shall be included in the calculation of and running of any applicable Timing Defenses. Nothing contained herein shall preclude any Party from asserting any Timing Defenses to the extent that such defenses already exist as of the Effective Date, and nothing herein shall be deemed to revive any Claims barred as of the Effective Date.

4. The Parties stipulate, covenant, and agree that, by executing and entering into this Agreement, the Parties are not waiving or otherwise impairing by estoppel or any other means, right and ability to raise any Timing Defenses available to them for the periods prior to the Effective Date and after the Expiration Date (and prior to the filing of any lawsuit or other legal proceeding by Plaintiffs subject to paragraph 5 of this Agreement).

5. The provisions of this Agreement comprise all of the terms, conditions, agreements and representations of the Parties respecting the tolling of the Timing Defenses. This Agreement may not be altered or amended except by written agreement executed by both the Plaintiffs and the Midway Directors and Officers. The Parties hereby agree that terms of this Agreement have not been changed, modified, or expanded by any oral agreements or representations entered into or made prior to or at the execution of this Agreement.

6. The Parties hereto acknowledge that each of them has had the benefit of counsel of their choice and has been offered an opportunity to review this Agreement with chosen counsel. The Parties hereto further acknowledge that they have, individually or through their respective counsel, participated in the preparation of this Agreement, and it is understood that no provision hereof shall be construed against any party hereto by reason of either party having drafted or prepared this Agreement.

7. This Agreement may be executed in one or more original, scanned or facsimile counterparts, each of which shall be deemed an original, but also which together will constitute one and the same instrument.

8. This Agreement shall terminate on the Expiration Date as provided in paragraph 1(c) above, unless extended in writing by the parties to be bound.

9. This Agreement contains the entire agreement between the Parties with respect to its subject matter, and no statement, promise, or inducement made by any of the parties or agent of the parties that is not contained in this Agreement shall be valid or binding, and this Agreement shall not be enlarged, modified, or altered except in writing signed by the parties.

10. This Tolling Agreement shall be binding upon and inure to the benefit of the parties, their predecessors, successors, and assigns, if any.

11. This Agreement shall be construed in accordance with and be governed by the internal laws, other than choice of laws, of the State of Nevada.

12. Either the Plaintiffs or the Midway Directors and Officers may terminate this Agreement, effective 30 days after the date of serving a written notice of termination, by serving notice of termination by letter to the other party. Such notice letter shall be served by email transmission, followed by the delivery of an original of the notice letter by United States certified mail, return receipt requested, to the following persons at the following addresses:

**If to the Plaintiffs:**

Justin T. Toth  
RAY QUINNEY & NEBEKER P.C.  
36 South State Street, Suite 1400  
P.O. Box 45385  
Salt Lake City, UT 84145-0385  
Email: [jtoth@rqn.com](mailto:jtoth@rqn.com)

**If to the Midway Directors and Officers:**

Holly Stein Sollod  
Holland & Hart LLP  
555 Seventeenth Street, Suite 3200  
Denver, CO 80202-3979  
Email: [hsteinsollod@hollandhart.com](mailto:hsteinsollod@hollandhart.com)

Eric B. Liebman  
Moye White LLP  
16 Market Square 6th Floor  
1400 16th Street  
Denver CO 80202  
Email: [eric.liebman@moyewwhite.com](mailto:eric.liebman@moyewwhite.com)

Mark Ferrario  
Chris Miltenberger  
Greenberg Traurig LLP  
Suite 400 North  
3773 Howard Hughes Parkway  
Las Vegas NV 89134

13. On or after the Expiration Date of this Agreement, the Parties shall have the right to file and pursue any and all Claims and to seek any and all legal remedies against any other Party that may be available to them, if any, and any Party shall be entitled to assert any Timing Defenses or other defenses, if any, subject to the terms of this Agreement.

14. Nothing in this Agreement shall be construed as an admission or denial by any of the Parties as to the merits of any Party's Claims against any other Party or the merits of any Party's defenses to any Claims.

15. Neither the Parties nor any of their agents, witnesses, or attorneys will mention or allude to this Agreement, its terms, its execution, or the existence of any Tolling Period in any way, directly or indirectly, before a jury or any fact finder in any proceeding for any purpose. The terms of this paragraph will survive termination of this Agreement.

**PLAINTIFFS:**

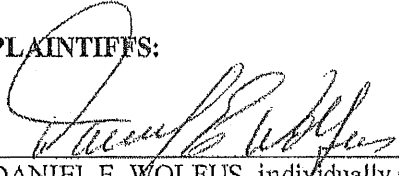
Holly Stein Sollod  
Holland & Hart LLP  
555 Seventeenth Street, Suite 3200  
Denver, CO 80202-3979  
Email: [hsteinsollod@hollandhart.com](mailto:hsteinsollod@hollandhart.com)

13. On or after the Expiration Date of this Agreement, the Parties shall have the right to file and pursue any and all Claims and to seek any and all legal remedies against any other Party that may be available to them, if any, and any Party shall be entitled to assert any Timing Defenses or other defenses, if any, subject to the terms of this Agreement.

14. Nothing in this Agreement shall be construed as an admission or denial by any of the Parties as to the merits of any Party's Claims against any other Party or the merits of any Party's defenses to any Claims.

15. Neither the Parties nor any of their agents, witnesses, or attorneys will mention or allude to this Agreement, its terms, its execution, or the existence of any Tolling Period in any way, directly or indirectly, before a jury or any fact finder in any proceeding for any purpose. The terms of this paragraph will survive termination of this Agreement.

**PLAINTIFFS:**

  
DANIEL E. WOLFUS, individually and as assignee of The Wolfus Revocable Trust, Christine Wolfus and Daniel Wolfus, and Devoney Wolfus and Stephanie Wolfus

\_\_\_\_\_  
GEORGE HAWES, individually and as assignee of Christina Hawes-Mohr, Kathleen Hawes, Ian Hawes, and Brendan Hawes

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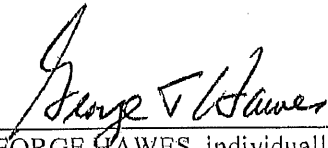
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Kathleen Hawes, Ian Hawes, and Brendan  
Hawes

**MIDWAY DIRECTORS AND  
OFFICERS:**



---

KENNETH A. BRUNK



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RICHARD SAWCHAK

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RICHARD MORITZ

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FRANK YU

---

BRAD BLACKETOR

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JOHN SHERIDAN

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TIMOTHY HADDON

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ROGER NEWELL

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MARTIN HALE

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RODNEY KNUTSON

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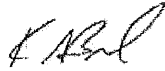
TREY ANDERSON

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NATHANIEL KLEIN



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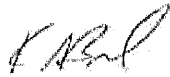
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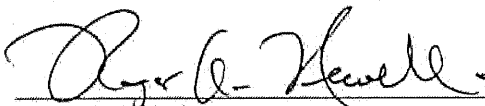
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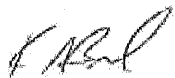
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MIDWAY DIRECTORS AND  
OFFICERS:

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KENNETH A. BRUNK

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*Supplement 1*  
JOHN SHERIDAN

TIMOTHY HADDON

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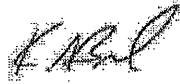
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**MIDWAY DIRECTORS AND  
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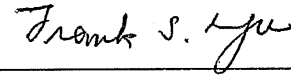
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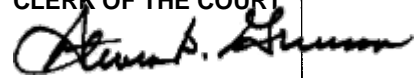
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\_\_\_\_\_  
NATHANIEL KLEIN



1 **ACSR**

Robert J. Cassity, Esq. (9779)

2 David J. Freeman, Esq. (10045)

HOLLAND & HART LLP

3 9555 Hillwood Drive, 2nd Floor

Las Vegas, Nevada 89134

4 Tel: (702) 669-4600

Fax: (702) 669-4650

5 [bcassity@hollandhart.com](mailto:bcassity@hollandhart.com)

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

6 Holly Stein Sollod, Esq. (*Pro Hac Vice Pending*)

HOLLAND & HART LLP

7 555 17th Street, Suite 3200

8 Denver, CO 80202

Tel: (303) 295-8085

9 Fax: (303) 295-8261

[hsteinsollod@hollandhart.com](mailto:hsteinsollod@hollandhart.com)

10 *Attorneys for Richard D. Moritz,*

*Bradley J. Blacketor, Timothy Haddon,*

11 *Richard Sawchak, John W. Sheridan,*

*Frank Yu, Roger A. Newell and*

12 *Rodney D. Knutson*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 DANIEL E. WOLFUS, ,

16 Plaintiff,

17 v.

CASE NO.: A-17-756971-C

DEPT. NO.: X

**ACCEPTANCE OF SERVICE**

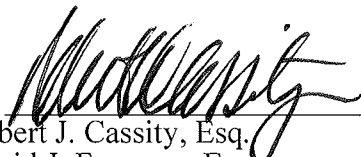
18 KENNETH A. BRUNK; RICHARD D.  
MORITZ; BRADLEY J. BLACKETOR;  
19 TIMOTHY HADDON; MARTIN M. HALE,  
JR.; TREY ANDERSON; RICHARD  
20 SAWCHAK; FRANK YU; JOHN W.  
SHERIDAN; ROGER A NEWELL; RODNEY  
21 D. KNUTSON; NATHANIEL KLEIN; INV-  
MID, LLC; a Delaware Limited Liability  
22 Company; EREF-MID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

24 Defendants.

26 Acceptance of Service of the Summons and First Amended Complaint on behalf of  
27 Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John  
28

1 W. Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson (collectively, "Defendants")  
2 is hereby acknowledged on the 10th day of July 2017. Defendants expressly reserve all rights  
3 and defenses.

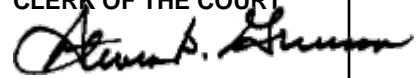
4 DATED this 10th day of July 2017.

5  
6 By   
7 Robert J. Cassity, Esq.  
8 David J. Freeman, Esq.  
9 HOLLAND & HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134

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

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





ACSR  
MARK E. FERRARIO, ESQ.  
(NV Bar No. 1625)  
CHRISTOPHER R. MILTENBERGER, ESQ.  
(NV Bar No. 10153)  
GREENBERG TRAURIG, LLP  
3773 Howard Hughes Parkway  
Suite 400 North  
Las Vegas, Nevada 89169  
Telephone: (702) 792-3773  
Facsimile: (702) 792-9002  
[ferrariom@gtlaw.com](mailto:ferrariom@gtlaw.com)  
[miltengergerc@gtlaw.com](mailto:miltengergerc@gtlaw.com)

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

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DANIEL E. WOLFUS,  
  
Plaintiff,  
  
v.

CASE NO.: A-17-756971-C  
DEPT. NO.: X

**ACCEPTANCE OF SERVICE**

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

Defendants.

Acceptance of Service of the Summons and First Amended Complaint on behalf of  
Defendants Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID  
II, LLC, and HCP-MID, LLC (collectively, "Defendants") is hereby acknowledged on the 7<sup>th</sup>  
day of July, 2017.

///

Defendants expressly reserve all rights and defenses.

DATED this 7<sup>th</sup> day of July, 2017.

GREENBERG TRAURIG, LLP



MARK E. FERRARIO, ESQ.

(NV Bar No. 1625)

CHRISTOPHER R. MILTENBERGER, ESQ.

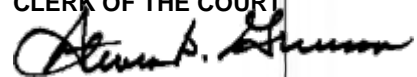
(NV Bar No. 10153)

3773 Howard Hughes Parkway

Suite 400 North

Las Vegas, Nevada 89169

*Counsel for Martin M. Hale, Jr.,  
Trey Anderson, Nathaniel Klein, INV-MID, LLC,  
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1 **ACSR**  
2 **JAMES R. CHRISTENSEN ESQ.**  
3 **Nevada Bar No. 3861**  
4 **James R. Christensen PC**  
5 **601 S. 6<sup>th</sup> Street**  
6 **Las Vegas, NV 89101**  
7 **Telephone: (702) 272-0406**  
8 **Facsimile: (702) 272-0415**  
9 **Attorney for Plaintiff DANIEL E. WOLFUS**

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 **DANIEL E. WOLFUS,**

13 **Plaintiff,**

14 **v.**

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


27 **Defendants.**

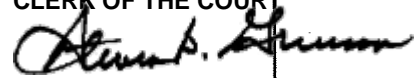
Case No.: A-17-756971-C  
Dept. No.: X

**ACCEPTANCE OF SERVICE**

28 **ACCEPTANCE OF SERVICE**

Defendant Kenneth A. Brunk ("Defendant") acknowledges that he has received and accepts service of the Summons and First Amended Complaint in this matter on the 20th day of July, 2017. Defendant expressly reserves all rights and defenses.

  
Defendant Kenneth A. Brunk



1 **ORDG**

2 Robert J. Cassity, Esq. (9779)  
3 David J. Freeman, Esq. (10045)  
4 HOLLAND & HART LLP  
5 9555 Hillwood Drive, 2nd Floor  
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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 AMENDED  
COMPLAINT WITHOUT PREJUDICE**

Electronic Filing Case

1 This matter came before this Court for hearing on November 1, 2017 at 9:30 a.m., on  
2 Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John  
3 W. Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson (collectively, the “D&O  
4 Defendants”) *Motion to Dismiss Amended Complaint* (the “Motion”), Defendants Martin M.  
5 Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID II, LLC and HCP-MID,  
6 LLC (collectively, the “Hale Defendants”) *Motion to Dismiss and Joinder* thereto (the “Hale  
7 Joinder”) and Defendant Kenneth A. Brunk (“Brunk”) *Motion to Dismiss and Joinder* thereto (the  
8 “Brunk Joinder”), wherein the D&O Defendants, Hale Defendants and Brunk (collectively, the  
9 “Defendants”) moved this Court to dismiss the *First Amended Complaint for Damages* filed by  
10 Plaintiff Daniel E. Wolfus (“Wolfus” or “Plaintiff”) on June 30, 2017 (the “Complaint”).

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

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

**FINDINGS OF FACT**

The following facts are drawn from the First Amended Complaint, which for purposes of this Order are taken as true. References to paragraph numbers are to that First Amended Complaint. In Paragraph 1 of the First Amended Complaint, Plaintiff alleges that this action is brought in his own capacity and as assignee of the rights and claims of The Wolfus Revocable Trust, Christine Wolfus and Daniel Wolfus (JTWROS), Devoney Wolfus, and Stephanie Wolfus.

***A. Plaintiff Becomes the Chairman and CEO of Midway Gold.***

1. Midway Gold Corp. ("Midway") was a publicly traded Canadian Corporation incorporated under the Company Act of British Columbia. Midway became a reporting issuer in the Province of British Columbia on May 16, 1997 and shortly thereafter its common shares were listed on the Vancouver Stock Exchange, the predecessor of the TSX Venture Exchange. Midway subsequently became a reporting issue in the Province of Alberta and at all relevant times, Midway was a reporting company under the Securities Exchange Act of 1934 (the "Exchange Act"). Also during all relevant times, Midway's common shares were listed on both the NYSE Amex exchange and Tier 1 of the TSX.V under the symbol. As a reporting company under the Exchange, Midway has been required to file periodic reports with the Securities and Exchange Committee (the "SEC"). At all relevant times, Midway's principal executive offices were located in Englewood, Colorado. Compl. ¶ 17.

2. Prior to 2008, Midway was an exploration stage company with all except one of its properties located in Nevada. *Id.* ¶¶ 18, 24. Midway's Pan Gold Project was located at the northern end of the Pancake mountain range in Western Pine County, Nevada. *Id.* ¶ 26.

3. At all relevant times, Defendants were directors, officers and/or controlling investors of Midway. *See* Compl., *generally*.

4. Plaintiff, a California resident, became a director of Midway in November 2008 and began purchasing Midway common stock in the open market in February 2008. As of May 1, 2012, Wolfus and his assignors owned 1,629,117 shares of Midway common stock. In January 2014, Wolfus and/or his assignors acquired an additional 200,000 shares of Midway common

1 stock. In September 2014, Wolfus and/or his assignors acquired an additional 1,000,000 shares  
2 of common stock and as of December 23, 2014, and after the sale of some shares, the combined  
3 shareholdings of Wolfus and/or his assignors were 2,402,251 shares of Midway common stock.  
4 Certain of these share purchases were made directly from Midway after Wolfus ceased to be an  
5 officer or director of Midway and were made pursuant to the exercise of stock options previously  
6 granted to Wolfus. *Id.* ¶¶ 1, 20 and 23.

7 5. As of October 8, 2013, Wolfus or his assignors owned 1,609,117 shares of  
8 Midway's common stock. *Id.* ¶ 96.

9 6. In 2009, Plaintiff became Chairman of the Board and the Chief Executive Officer  
10 of Midway, serving in both capacities until May 18, 2012 when he was replaced by Brunk. *Id.* ¶  
11 21.

12 7. In May 2010, Brunk was hired by Midway as its President and Chief Operating  
13 Officer with the primary assignment to bring the Pan project into production. *Id.* ¶ 30.

14 8. Brunk served in that capacity until May 2012 at which time he also became  
15 Chairman of the Board and CEO after Midway's Board of Directors voted to replace Plaintiff in  
16 these positions. *Id.* ¶¶ 30, 44.

17 9. Plaintiff, however, continued as a director until June 2013 and continued to receive  
18 board packages and participated in quarterly Board meeting which occurred prior to June 2013.  
19 *Id.* ¶ 44.

20 ***B. The 2011 Pan Mine Study.***

21 10. At the time Plaintiff became Chairman of the Board and CEO, Midway had  
22 properties in the exploratory stage where gold mineralization had been identified (*see* Compl. at  
23 ¶ 24), including the Pan Mine (*see id.* ¶ 26).

24 11. Prior to May 2010, Midway made the decision to convert from a purely exploration  
25 company into a gold mining production company using the Pan Mine as its initial production  
26 mine. *Id.* ¶ 29.

1           12.     In November 2011, Midway reported the results of its Feasibility Study and its  
2 mining plan for the Pan Project. *Id.* ¶ 38.

3           13.     In December 2011, Midway filed a feasibility study on the Pan Mine (the “2011  
4 Pan Mine Study”). *Id.* ¶ 39.

5           14.     As of December 31, 2013, Brunk, Hale, Newell, Sheridan, Yu, Knutson and Klein  
6 were each directors of Midway; Brunk was the Chairman, President and Chief Executive officer  
7 of Midway; Blacketor was a Senior Vice President and Chief Financial Officer of Midway; Moritz  
8 was the Senior Vice President of Operations of Midway; Brunk, Blacketor, Newell, Yu and Klein  
9 were each members of the Disclosure Committee of Midway; Sheridan, Yu and Knutson were  
10 each members of the Audit Committee of Midway; Brunk, Hale, Sheridan, Yu and Klein were  
11 each members of the Budget/Work Plan Committee; and Newell, Sheridan and Yu were each  
12 members of the Environment, Health and Safety Committee. In those capacities, each was  
13 responsible for insuring that Midway publically disclosed all material information concerning the  
14 Pan project and that all publically disclosed information concerning the Pan project was true and  
15 complete, was not misleading and did not omitted material facts. These defendants were  
16 collectively referred to as the 2013 Control Defendants. *Id.* ¶ 58.

17           15.     Prior to December 13, 2013, Midway made numerous public filings and issued  
18 numerous press releases concerning Midway and the Pan project. See Complaint generally.

19           16.     As of December 13, 2013, the 2013 Control Defendants knew each of the  
20 following facts ("2013 Undisclosed Facts") to be true, knew that each of the following facts would  
21 be material to any reasonable investor in Midway including Wolfus, and knew that none of those  
22 facts had been disclosed to the public generally or to Wolfus:

23                 A.     Midway had been unable to raise sufficient cash either in the form of equity  
24 or debt to allow it to complete the Pan project in the manner set forth in the Feasibility Study as  
25 well as fund on-going operations until the Pan project produced sufficient revenues to cover those  
26 expenses;



1           B       Hale and the Hale Investors had blocked any consideration of the sale of  
2 either Midway's interest in the Spring Valley project or the Gold Rock project or any other  
3 material assets to generate additional revenues;

4           C.       The environmental and other permits secured by Midway for the Pan  
5 project were based upon and required Midway to conduct mining operations in accordance with  
6 the mining plan submitted which called for the crushing and agglomeration of ore before it was  
7 placed on the leach pads and Midway had taken no steps to cause those permits to be modified to  
8 allow Midway to proceed using Run of Mine for the South Pit of the Pan project; and

9           D.       Modifying the permits to permit Run of Mine would have been time  
10 consuming delaying the time when Midway could start the leaching process. *Id.* ¶ 59.

11       17.       Prior to August, 31, 2014, Midway made additional numerous public filings and  
12 issued numerous press releases concerning Midway and the Pan Project. See Complaint  
13 generally.

14       18.       As of August 31, 2014, Brunk, Hale, Sawchak, Sheridan, Yu, Haddon and Klein  
15 were each directors of Midway; Haddon was Chairman of the Board, Brunk was the President  
16 and Chief Executive officer of Midway; Blacketor was a Senior Vice President and Chief  
17 Financial Officer of Midway;; Brunk, Blacketor, Yu and Klein were each members of the  
18 Disclosure Committee of Midway; Sheridan, Yu and Sawchak were each members of the Audit  
19 Committee of Midway; Brunk, Hale, Sheridan, Yu and Klein were each members of the  
20 Budget/Work Plan Committee; and Haddon, Sheridan and Yu were each members of the  
21 Environment, Health and Safety Committee. In those capacities, each was responsible for  
22 insuring that Midway publically disclosed all material information concerning the Pan project and  
23 that all publically disclosed information concerning the Pan project was true and complete, was  
24 not misleading and did not omitted material facts. The foregoing defendants are collectively  
25 referred to as the "2014 Control Defendants."

26  
27  
28

1           19. As of August 31, 2014, the 2014 Control Defendants knew each of 2013  
2 Undisclosed Facts and the following addition facts ("collectively the 2014 Undisclosed Facts") to  
3 be true, knew that each of those facts would be material to any reasonable investor in Midway  
4 including Wolfus, and knew that none of those facts had been disclosed to the public generally or  
5 to Wolfus:

6           A. Ledcor was poised to commence mining operations at Pan loading ore  
7 directly on the leach pads but Midway did not have either a "qualified" person or a knowledgeable  
8 employee on site to supervise the loading of the ore on the leach pads;

9           B. Midway had not sought or received modified permits to allow it to deviate  
10 from the mining plan submitted for the permits and as contained in the Feasibility Study; and

11           C. Midway did not have the necessary facilities to process the gold solution  
12 once the leaching had been completed and it would be a considerable period before those facilities  
13 were constructed and permitted for operation. *Id.* ¶ 79.

14           ***C. Plaintiff Exercises Stock Options in 2014.***

15           20. On January 7, 2014, Plaintiff notified Midway of his intent to exercise some of the  
16 stock options. At the time Plaintiff exercised these options he was not aware of any of the 2013  
17 Undisclosed Facts, had no way of learning the 2013 undisclosed facts except from the 2013  
18 Control Defendants, would not have exercised any of his options and would instead have sold his  
19 and his assignors' remaining Midway common shares. *Id.* ¶ 60.

20           21. On January 23, 2014, Plaintiff purchased 200,000 shares at \$0.56/share for  
21 \$112,000 Canadian Dollars (\$100,636 USD). *Id.* ¶ 63.

22           22. On September 5, 2014, Plaintiff notified Midway of his intent to exercise some of  
23 the stock options. At the time Wolfus exercised these options he still was not aware of any of the  
24 2014 Undisclosed Facts, had no way of learning the 2014 Undisclosed Facts except from the 2014  
25 Control Defendants, would not have exercised any of his options had he known. *Id.* ¶ 80.

1           23.     On September 19, 2014, Plaintiff consummated his stock option exercise  
2 purchasing 1,000,000 shares at \$0.86/share for \$860,000 Canadian Dollars (\$783,778 USD). *Id.*  
3 ¶ 82.

4 ***D.     Plaintiff Asserts Claims Against Defendants.***

5           24.     Plaintiff asserts as his First Cause of Action a claim for securities fraud based upon  
6 the California Corporate Securities Law of 1968, California *Corporations Code* § 25000, *et seq.*  
7 (the "Act"). In that cause of action, Plaintiff alleges that in violation of California *Corporations*  
8 *Code* § 25401, the 2013 public filings by Midway which discussed the Pan project were materially  
9 false and misleading by failing to timely disclose each of the 2013 Undisclosed Facts and the  
10 failure by the 2013 Control Defendants to disclose the 2013 Undisclosed Facts was intentional  
11 and was done to encourage investors to retain and purchase Midway's common stock. Plaintiff  
12 further alleges that In violation of California *Corporations Code* § 25401, the pre-September 2014  
13 public filings by Midway which discussed the Pan project were materially false and misleading  
14 by failing to timely disclose each of the 2014 Undisclosed Facts and the failure by the 2014  
15 Control Defendants to disclose the 2014 Undisclosed Facts was intentional and was done to  
16 encourage investors to retain and purchase Midway's common stock. Each of the defendants was  
17 alleged as being liable as "controlling persons" of Midway. *Id.* ¶¶ 92-108.

18           25.     Plaintiff asserts as his Second Cause of Action a claim under California law for  
19 breach of fiduciary duty against the 2013 Control Defendants arising out of their failure to  
20 disclose the 2013 Undisclosed Facts prior to Plaintiff stock option exercise in January 2014 and  
21 against the 2014 Control Defendants for their failure to disclose the 2013 Undisclosed Facts and  
22 the 2014 Undisclosed Facts prior to Plaintiff stock option exercise in September 2014. Each of  
23 the defendants was alleged to owe Plaintiff fiduciary duties as officers, directors and/or  
24 controlling persons of Midway. *Id.* ¶¶ 109-114.

25           26.     Plaintiff asserts as his Third Cause of Action a claim under California law for  
26 aiding and abetting a breach of fiduciary duty full disclosure of all material facts owed to Plaintiff  
27 by Midway. *Id.* ¶¶ 115-121.

28

27. Plaintiff asserts as his Fourth Cause of Action a claim under California law for common law fraud for failing to disclose the 2013 Undisclosed Facts and the 2014 Undisclosed Facts related to the Pan project prior to Plaintiff's exercise of his stock options in 2014. *Id.* ¶¶ 122-129.

28. Plaintiff asserts as his misnamed Fifth Cause of Action a claim under California law for common law negligent misrepresentation for negligently failing to disclose the 2013 Undisclosed Facts and the 2014 Undisclosed Facts related to the Pan project prior to Wolfus' exercise of his stock options in 2014. *Id.* ¶¶ 130-138.

29. Each cause of action sought damages according to proof. *Id.* ¶¶ 108, 114, 121, 129 and 138.

### **CONCLUSIONS OF LAW**

#### ***A. Legal Standard on a Rule 12(b)(1) Motion.***

30. Rule 12(b)(1) of the Nevada Rules of Civil Procedure ("NRCP") allows a party to seek dismissal of a complaint for lack of subject matter jurisdiction. NRCP 12(b)(1); *Morrison v. Beach City LLC*, 116 Nev. 34, 36, 991 P.2d 982, 983 (2000).

31. "NRCP 12(h)(3) provides that '[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.'" *Morrison*, 116 Nev. at 36, 991 P.2d at 983. The burden of proving subject matter jurisdiction lies with the party asserting subject matter jurisdiction, the plaintiff or petitioner in an action. *Id.*

32. A motion to dismiss for lack of subject matter jurisdiction is proper "when a lack of jurisdiction over the subject matter [] appears on the face of the pleading." *Girola v. Roussille*, 81 Nev. 661, 663 (1965); *see also, Nevada v. United States*, 221 F. Supp. 2d 1241, 1248 (D. Nev. 2002).<sup>1</sup> Where the 12(b)(1) is a facial challenge, the pleadings are taken as true for the purposes of the motion. *See Nevada v. United States*, 221 F. Supp. 2d at 1248; *see also Jetform Corp. v.*

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<sup>1</sup> "Federal cases interpreting the Federal Rules of Civil Procedure 'are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.'" *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).

1 *Unisys Corp.*, 11 F. Supp. 2d 788, 789 (D. Va. 1998) (holding that if the challenge is that the  
2 complaint fails to state sufficient facts to support subject matter jurisdiction the analysis is similar  
3 to a motion to dismiss for failure to state a claim).

4 ***B. Plaintiff Lacks Standing to Assert Derivative Claims.***

5 33. Rather, the focus is on the essential nature of the claims. *See Kramer v. W. Pac.*  
6 *Indus.*, 546 A.2d 348, 352 (Del. 1988) (“Whether a cause of action is individual or derivative  
7 must be determined from the nature of the wrong alleged and the relief, if any, which could result  
8 if plaintiff were to prevail.”).

9 34. To distinguish between direct and derivative claims, Nevada “courts should  
10 consider only ‘(1) who suffered the alleged harm (the corporation or the suing stockholders,  
11 individually); and (2) who would receive the benefit of any recovery or other remedy (the  
12 corporation or the stockholders, individually)?’” *Parametric Sound Corp. v. Eighth Judicial Dist.*  
13 *Court*, 66689, 2017 WL 4078845, \*7 (Nev. Sept. 14, 2017) (quoting *Tooley v. Donaldson, Lufkin,*  
14 *& Jenrette, Inc.*, 845 A.2d. 1031, 1033 (Del. 2004)).

15 35. Having carefully considered who suffered the harm alleged in the Complaint, and  
16 who would receive the benefit of any recovery, the Court concludes that Plaintiff’s claims are  
17 derivative in nature under the Direct Harm test recently adopted by the Nevada Supreme Court in  
18 *Parametric Sound Corp.*

19 36. Although Plaintiff frames his damages as arising from the exercise of his stock  
20 options and corresponding purchase of Midway shares, reading the Complaint as a whole  
21 indicates the alleged harm suffered by Plaintiff stems from his shares becoming valueless after  
22 acquiring them.

23 37. Claims premised on harm caused by the reduction in value of shares of stock are  
24 inherently derivative as the reduction in value arises from the reduction of the entire value of the  
25 corporation, and such an equal injury is not a specific direct harm to each shareholder  
26 individually. *Id.*

1           38.     Because Plaintiff failed to allege any direct harm, the claims are derivative and  
2 Plaintiff lacks standing to assert such claims.

3     ***C.     Under the Internal Affairs Doctrine, British Columbia Law Vests Exclusive***  
4     ***Jurisdiction in the Supreme Court of British Columbia to Adjudicate Plaintiff's***  
5     ***Derivative Claims.***

6           39.     This case concerns the internal management of a Canadian corporation and that,  
7 as a result, the internal affairs doctrine requires this Court to apply the law of the jurisdiction  
8 where the corporation was incorporated (British Columbia, Canada) to determine whether it has  
9 subject matter jurisdiction to hear Plaintiff's claims. *See Dictor v. Creative Mgmt. Servs., LLC.*,  
10 223 P.3d 332, 335 (Nev. 2010) (noting that Nevada has adopted the Restatement (Second) of  
11 Conflict of Laws as the relevant authority for its choice-of-law jurisprudence in tort cases); *see*  
12 *also Hausman v. Buckley*, 299 F.2d 696, 702 (2d Cir. 1962) (internal affairs doctrine "is well  
13 established and generally followed throughout this country").

14           40.     Because Midway is a British Columbia corporation, its internal affairs are  
15 governed by the Business Corporations Act ("BCA") of British Columbia, which endows its  
16 Supreme Court with exclusive jurisdiction over derivative claims involving British Columbia  
17 corporations. *See* BCA at §§ 232 & 233.

18           41.     Under the BCA, a shareholder or director of a British Columbia corporation must  
19 satisfy two separate and mandatory preconditions before bringing a derivative suit involving the  
20 corporation: (a) the complainant must provide notice to the directors prior to initiating the action;  
21 and (b) the complainant must obtain judicial permission from the Supreme Court of British  
22 Columbia to bring the derivative action prior to filing suit. *See id.*

42. Because Plaintiff failed to make application to and did not obtain leave from the Supreme Court of British Columbia to bring this derivative action on behalf of Midway, Plaintiff lacks standing to assert the derivative claims alleged in the Complaint and this Court cannot properly exercise subject matter jurisdiction over the same. *See Fagin v. Doby George, LLC*, 525 Fed. App'x 618, 619 (9th Cir. 2013) (affirming a Nevada federal district court's dismissal of a shareholder derivative action for lack of subject matter jurisdiction where, after applying the internal affairs doctrine, plaintiffs failed to obtain leave to assert said claims from Canada's Yukon Supreme Court).

***D. Plaintiff Lacks Standing to Assert his Claims Because They Are Property of the Bankruptcy Estate of Midway Gold.***

43. The commencement of a bankruptcy case creates a bankruptcy estate. *Bolick v. Pasioneck*, 2015 WL 1734936, at \*5 (D. Nev. Apr. 16, 2015).

44. Upon creation of the bankruptcy estate, section 541 of the bankruptcy code ("Section 541") mandates that all legal and equitable property interests of the debtor become property of its bankruptcy estate, including all prepetition causes of action held by the debtor. *See* 11 U.S.C. § 541(a).

45. Many courts, including the Ninth Circuit, have held that derivative claims are property of the bankruptcy estate pursuant to Section 541 and, as such, can only be enforced by the debtor or trustee. *See Lapidus v. Hecht*, 232 F.3d 679, 682 (9th Cir. 2000) ("[a] bankruptcy court may enjoin a derivative claim brought by shareholders *because the claim is property of the bankruptcy estate.*") (emphasis added).

46. Because Plaintiff's derivative claims arose prior to the filing of Midway's bankruptcy case (*Midway Gold US Inc. et al.*, Bankr. D. Colo., Case No. 15-16835), said claims belong to Midway's bankruptcy estate and Plaintiff lacks standing to assert the same.

1           47. Furthermore, Midway's proposed *Second Amended Joint Chapter 11 Plan of*  
2 *Liquidation* (the "Plan") expressly transfers Plaintiff's derivative claims to its liquidating trust,  
3 which will become the party with exclusive authority to prosecute such claims for the benefit of  
4 Midway's general unsecured creditors.

5           48. Because Plaintiff's derivative claims are being exclusively administered in  
6 Midway's bankruptcy case for the benefit of its general unsecured creditors pursuant to the Plan,  
7 Plaintiff lacks standing to assert such claims.

8           WHEREFORE, having made the foregoing findings of fact and conclusions of law and  
9 oral findings on the record, and good cause appearing,

10           IT IS HEREBY ORDERED that the *D&O Defendants' Motion to Dismiss Amended*  
11 *Complaint* is **GRANTED**.

12           IT IS HEREBY FURTHER ORDERED that the Hale Defendants' *Motion to Dismiss and*  
13 *Joinder* is **GRANTED**.

14           IT IS HEREBY FURTHER ORDERED that Brunk's *Motion to Dismiss and Joinder* is  
15 **GRANTED**.

16 . . .

17 . . .

18 . . .  
19



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

1 IT IS HEREBY FURTHER ORDERED that Plaintiff is granted leave to amend, provided  
2 that a Second Amended Complaint is filed within 30 days of filing and service of the Notice of  
3 Entry of this Order.

4 IT IS SO ORDERED.

5 DATED this 4 day of <sup>Jan</sup> ~~December~~ 2017.

6 Nancy L. Alie  
7 DISTRICT COURT JUDGE  
8 *AE*

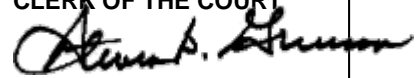
8 Respectfully submitted by:

9   
10 Robert J. Cassity, Esq. (9779)  
11 David J. Freeman, Esq. (10045)  
12 HOLLAND & HART LLP  
13 9555 Hillwood Drive, 2nd Floor  
14 Las Vegas, Nevada 89134  
15 Tel: (702) 669-4600  
16 Fax: (702) 669-4650  
17 bcassity@hollandhart.com  
18 dfreeman@hollandhart.com

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

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

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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 AMENDED COMPLAINT  
WITHOUT PREJUDICE**

Electronic Filing Case

///

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///

1 PLEASE TAKE NOTICE that an Order Granting Defendants' Motion to Dismiss  
2 Amended Complaint Without Prejudice was entered in the above-captioned matter on January  
3 5, 2018. A copy of said Order is attached hereto.

4 DATED this 8th day of January, 2018.

5  
6  
7 By /s/ David J. Freeman  
Robert J. Cassity, Esq.  
David J. Freeman, Esq.  
8 HOLLAND & HART LLP  
9 9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of January 2018, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AMEDNED COMPLAINT WITHOUT PREJUDICE** 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  
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*

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*

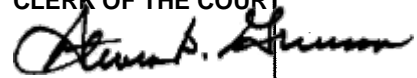
☒ **U.S. Mail:** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Eric B. Liebman, Esq.  
Rebecca DeCook, Esq.  
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



1 **ORDG**

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

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

18 *Attorneys for Richard D. Moritz,*  
19 *Bradley J. Blacketor, Timothy Haddon,*  
20 *Richard Sawchak, John W. Sheridan,*  
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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 AMENDED  
COMPLAINT WITHOUT PREJUDICE**

Electronic Filing Case

1 This matter came before this Court for hearing on November 1, 2017 at 9:30 a.m., on  
2 Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John  
3 W. Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson (collectively, the “D&O  
4 Defendants”) *Motion to Dismiss Amended Complaint* (the “Motion”), Defendants Martin M.  
5 Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID II, LLC and HCP-MID,  
6 LLC (collectively, the “Hale Defendants”) *Motion to Dismiss and Joinder* thereto (the “Hale  
7 Joinder”) and Defendant Kenneth A. Brunk (“Brunk”) *Motion to Dismiss and Joinder* thereto (the  
8 “Brunk Joinder”), wherein the D&O Defendants, Hale Defendants and Brunk (collectively, the  
9 “Defendants”) moved this Court to dismiss the *First Amended Complaint for Damages* filed by  
10 Plaintiff Daniel E. Wolfus (“Wolfus” or “Plaintiff”) on June 30, 2017 (the “Complaint”).

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

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

**FINDINGS OF FACT**

The following facts are drawn from the First Amended Complaint, which for purposes of this Order are taken as true. References to paragraph numbers are to that First Amended Complaint. In Paragraph 1 of the First Amended Complaint, Plaintiff alleges that this action is brought in his own capacity and as assignee of the rights and claims of The Wolfus Revocable Trust, Christine Wolfus and Daniel Wolfus (JTWROS), Devoney Wolfus, and Stephanie Wolfus.

***A. Plaintiff Becomes the Chairman and CEO of Midway Gold.***

1. Midway Gold Corp. ("Midway") was a publicly traded Canadian Corporation incorporated under the Company Act of British Columbia. Midway became a reporting issuer in the Province of British Columbia on May 16, 1997 and shortly thereafter its common shares were listed on the Vancouver Stock Exchange, the predecessor of the TSX Venture Exchange. Midway subsequently became a reporting issue in the Province of Alberta and at all relevant times, Midway was a reporting company under the Securities Exchange Act of 1934 (the "Exchange Act"). Also during all relevant times, Midway's common shares were listed on both the NYSE Amex exchange and Tier 1 of the TSX.V under the symbol. As a reporting company under the Exchange, Midway has been required to file periodic reports with the Securities and Exchange Committee (the "SEC"). At all relevant times, Midway's principal executive offices were located in Englewood, Colorado. Compl. ¶ 17.

2. Prior to 2008, Midway was an exploration stage company with all except one of its properties located in Nevada. *Id.* ¶¶ 18, 24. Midway's Pan Gold Project was located at the northern end of the Pancake mountain range in Western Pine County, Nevada. *Id.* ¶ 26.

3. At all relevant times, Defendants were directors, officers and/or controlling investors of Midway. *See Compl., generally.*

4. Plaintiff, a California resident, became a director of Midway in November 2008 and began purchasing Midway common stock in the open market in February 2008. As of May 1, 2012, Wolfus and his assignors owned 1,629,117 shares of Midway common stock. In January 2014, Wolfus and/or his assignors acquired an additional 200,000 shares of Midway common

1 stock. In September 2014, Wolfus and/or his assignors acquired an additional 1,000,000 shares  
2 of common stock and as of December 23, 2014, and after the sale of some shares, the combined  
3 shareholdings of Wolfus and/or his assignors were 2,402,251 shares of Midway common stock.  
4 Certain of these share purchases were made directly from Midway after Wolfus ceased to be an  
5 officer or director of Midway and were made pursuant to the exercise of stock options previously  
6 granted to Wolfus. *Id.* ¶¶ 1, 20 and 23.

7 5. As of October 8, 2013, Wolfus or his assignors owned 1,609,117 shares of  
8 Midway's common stock. *Id.* ¶ 96.

9 6. In 2009, Plaintiff became Chairman of the Board and the Chief Executive Officer  
10 of Midway, serving in both capacities until May 18, 2012 when he was replaced by Brunk. *Id.* ¶  
11 21.

12 7. In May 2010, Brunk was hired by Midway as its President and Chief Operating  
13 Officer with the primary assignment to bring the Pan project into production. *Id.* ¶ 30.

14 8. Brunk served in that capacity until May 2012 at which time he also became  
15 Chairman of the Board and CEO after Midway's Board of Directors voted to replace Plaintiff in  
16 these positions. *Id.* ¶¶ 30, 44.

17 9. Plaintiff, however, continued as a director until June 2013 and continued to receive  
18 board packages and participated in quarterly Board meeting which occurred prior to June 2013.  
19 *Id.* ¶ 44.

20 ***B. The 2011 Pan Mine Study.***

21 10. At the time Plaintiff became Chairman of the Board and CEO, Midway had  
22 properties in the exploratory stage where gold mineralization had been identified (*see* Compl. at  
23 ¶ 24), including the Pan Mine (*see id.* ¶ 26).

24 11. Prior to May 2010, Midway made the decision to convert from a purely exploration  
25 company into a gold mining production company using the Pan Mine as its initial production  
26 mine. *Id.* ¶ 29.



1           12.     In November 2011, Midway reported the results of its Feasibility Study and its  
2 mining plan for the Pan Project. *Id.* ¶ 38.

3           13.     In December 2011, Midway filed a feasibility study on the Pan Mine (the “2011  
4 Pan Mine Study”). *Id.* ¶ 39.

5           14.     As of December 31, 2013, Brunk, Hale, Newell, Sheridan, Yu, Knutson and Klein  
6 were each directors of Midway; Brunk was the Chairman, President and Chief Executive officer  
7 of Midway; Blacketer was a Senior Vice President and Chief Financial Officer of Midway; Moritz  
8 was the Senior Vice President of Operations of Midway; Brunk, Blacketer, Newell, Yu and Klein  
9 were each members of the Disclosure Committee of Midway; Sheridan, Yu and Knutson were  
10 each members of the Audit Committee of Midway; Brunk, Hale, Sheridan, Yu and Klein were  
11 each members of the Budget/Work Plan Committee; and Newell, Sheridan and Yu were each  
12 members of the Environment, Health and Safety Committee. In those capacities, each was  
13 responsible for insuring that Midway publically disclosed all material information concerning the  
14 Pan project and that all publically disclosed information concerning the Pan project was true and  
15 complete, was not misleading and did not omitted material facts. These defendants were  
16 collectively referred to as the 2013 Control Defendants. *Id.* ¶ 58.

17           15.     Prior to December 13, 2013, Midway made numerous public filings and issued  
18 numerous press releases concerning Midway and the Pan project. See Complaint generally.

19           16.     As of December 13, 2013, the 2013 Control Defendants knew each of the  
20 following facts ("2013 Undisclosed Facts") to be true, knew that each of the following facts would  
21 be material to any reasonable investor in Midway including Wolfus, and knew that none of those  
22 facts had been disclosed to the public generally or to Wolfus:

23                 A.     Midway had been unable to raise sufficient cash either in the form of equity  
24 or debt to allow it to complete the Pan project in the manner set forth in the Feasibility Study as  
25 well as fund on-going operations until the Pan project produced sufficient revenues to cover those  
26 expenses;

1           B       Hale and the Hale Investors had blocked any consideration of the sale of  
2 either Midway's interest in the Spring Valley project or the Gold Rock project or any other  
3 material assets to generate additional revenues;

4           C.       The environmental and other permits secured by Midway for the Pan  
5 project were based upon and required Midway to conduct mining operations in accordance with  
6 the mining plan submitted which called for the crushing and agglomeration of ore before it was  
7 placed on the leach pads and Midway had taken no steps to cause those permits to be modified to  
8 allow Midway to proceed using Run of Mine for the South Pit of the Pan project; and

9           D.       Modifying the permits to permit Run of Mine would have been time  
10 consuming delaying the time when Midway could start the leaching process. *Id.* ¶ 59.

11       17.       Prior to August, 31, 2014, Midway made additional numerous public filings and  
12 issued numerous press releases concerning Midway and the Pan Project. See Complaint  
13 generally.

14       18.       As of August 31, 2014, Brunk, Hale, Sawchak, Sheridan, Yu, Haddon and Klein  
15 were each directors of Midway; Haddon was Chairman of the Board, Brunk was the President  
16 and Chief Executive officer of Midway; Blacketor was a Senior Vice President and Chief  
17 Financial Officer of Midway;; Brunk, Blacketor, Yu and Klein were each members of the  
18 Disclosure Committee of Midway; Sheridan, Yu and Sawchak were each members of the Audit  
19 Committee of Midway; Brunk, Hale, Sheridan, Yu and Klein were each members of the  
20 Budget/Work Plan Committee; and Haddon, Sheridan and Yu were each members of the  
21 Environment, Health and Safety Committee. In those capacities, each was responsible for  
22 insuring that Midway publically disclosed all material information concerning the Pan project and  
23 that all publically disclosed information concerning the Pan project was true and complete, was  
24 not misleading and did not omitted material facts. The foregoing defendants are collectively  
25 referred to as the "2014 Control Defendants."

26  
27  
28

1           19. As of August 31, 2014, the 2014 Control Defendants knew each of 2013  
2 Undisclosed Facts and the following addition facts ("collectively the 2014 Undisclosed Facts") to  
3 be true, knew that each of those facts would be material to any reasonable investor in Midway  
4 including Wolfus, and knew that none of those facts had been disclosed to the public generally or  
5 to Wolfus:

6           A. Ledcor was poised to commence mining operations at Pan loading ore  
7 directly on the leach pads but Midway did not have either a "qualified" person or a knowledgeable  
8 employee on site to supervise the loading of the ore on the leach pads;

9           B. Midway had not sought or received modified permits to allow it to deviate  
10 from the mining plan submitted for the permits and as contained in the Feasibility Study; and

11           C. Midway did not have the necessary facilities to process the gold solution  
12 once the leaching had been completed and it would be a considerable period before those facilities  
13 were constructed and permitted for operation. *Id.* ¶ 79.

14 ***C. Plaintiff Exercises Stock Options in 2014.***

15           20. On January 7, 2014, Plaintiff notified Midway of his intent to exercise some of the  
16 stock options. At the time Plaintiff exercised these options he was not aware of any of the 2013  
17 Undisclosed Facts, had no way of learning the 2013 undisclosed facts except from the 2013  
18 Control Defendants, would not have exercised any of his options and would instead have sold his  
19 and his assignors' remaining Midway common shares. *Id.* ¶ 60.

20           21. On January 23, 2014, Plaintiff purchased 200,000 shares at \$0.56/share for  
21 \$112,000 Canadian Dollars (\$100,636 USD). *Id.* ¶ 63.

22           22. On September 5, 2014, Plaintiff notified Midway of his intent to exercise some of  
23 the stock options. At the time Wolfus exercised these options he still was not aware of any of the  
24 2014 Undisclosed Facts, had no way of learning the 2014 Undisclosed Facts except from the 2014  
25 Control Defendants, would not have exercised any of his options had he known. *Id.* ¶ 80.

1           23.     On September 19, 2014, Plaintiff consummated his stock option exercise  
2 purchasing 1,000,000 shares at \$0.86/share for \$860,000 Canadian Dollars (\$783,778 USD). *Id.*  
3 ¶ 82.

4 ***D.     Plaintiff Asserts Claims Against Defendants.***

5           24.     Plaintiff asserts as his First Cause of Action a claim for securities fraud based upon  
6 the California Corporate Securities Law of 1968, California *Corporations Code* § 25000, *et seq.*  
7 (the "Act"). In that cause of action, Plaintiff alleges that in violation of California *Corporations*  
8 *Code* § 25401, the 2013 public filings by Midway which discussed the Pan project were materially  
9 false and misleading by failing to timely disclose each of the 2013 Undisclosed Facts and the  
10 failure by the 2013 Control Defendants to disclose the 2013 Undisclosed Facts was intentional  
11 and was done to encourage investors to retain and purchase Midway's common stock. Plaintiff  
12 further alleges that In violation of California *Corporations Code* § 25401, the pre-September 2014  
13 public filings by Midway which discussed the Pan project were materially false and misleading  
14 by failing to timely disclose each of the 2014 Undisclosed Facts and the failure by the 2014  
15 Control Defendants to disclose the 2014 Undisclosed Facts was intentional and was done to  
16 encourage investors to retain and purchase Midway's common stock. Each of the defendants was  
17 alleged as being liable as "controlling persons" of Midway. *Id.* ¶¶ 92-108.

18           25.     Plaintiff asserts as his Second Cause of Action a claim under California law for  
19 breach of fiduciary duty against the 2013 Control Defendants arising out of their failure to  
20 disclose the 2013 Undisclosed Facts prior to Plaintiff stock option exercise in January 2014 and  
21 against the 2014 Control Defendants for their failure to disclose the 2013 Undisclosed Facts and  
22 the 2014 Undisclosed Facts prior to Plaintiff stock option exercise in September 2014. Each of  
23 the defendants was alleged to owe Plaintiff fiduciary duties as officers, directors and/or  
24 controlling persons of Midway. *Id.* ¶¶ 109-114.

25           26.     Plaintiff asserts as his Third Cause of Action a claim under California law for  
26 aiding and abetting a breach of fiduciary duty full disclosure of all material facts owed to Plaintiff  
27 by Midway. *Id.* ¶¶ 115-121.

27. Plaintiff asserts as his Fourth Cause of Action a claim under California law for common law fraud for failing to disclose the 2013 Undisclosed Facts and the 2014 Undisclosed Facts related to the Pan project prior to Plaintiff's exercise of his stock options in 2014. *Id.* ¶¶ 122-129.

28. Plaintiff asserts as his misnamed Fifth Cause of Action a claim under California law for common law negligent misrepresentation for negligently failing to disclose the 2013 Undisclosed Facts and the 2014 Undisclosed Facts related to the Pan project prior to Wolfus' exercise of his stock options in 2014. *Id.* ¶¶ 130-138.

29. Each cause of action sought damages according to proof. *Id.* ¶¶ 108, 114, 121, 129 and 138.

### **CONCLUSIONS OF LAW**

#### ***A. Legal Standard on a Rule 12(b)(1) Motion.***

30. Rule 12(b)(1) of the Nevada Rules of Civil Procedure ("NRCP") allows a party to seek dismissal of a complaint for lack of subject matter jurisdiction. NRCP 12(b)(1); *Morrison v. Beach City LLC*, 116 Nev. 34, 36, 991 P.2d 982, 983 (2000).

31. "NRCP 12(h)(3) provides that '[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.'" *Morrison*, 116 Nev. at 36, 991 P.2d at 983. The burden of proving subject matter jurisdiction lies with the party asserting subject matter jurisdiction, the plaintiff or petitioner in an action. *Id.*

32. A motion to dismiss for lack of subject matter jurisdiction is proper "when a lack of jurisdiction over the subject matter [] appears on the face of the pleading." *Girola v. Roussille*, 81 Nev. 661, 663 (1965); *see also, Nevada v. United States*, 221 F. Supp. 2d 1241, 1248 (D. Nev. 2002).<sup>1</sup> Where the 12(b)(1) is a facial challenge, the pleadings are taken as true for the purposes of the motion. *See Nevada v. United States*, 221 F. Supp. 2d at 1248; *see also Jetform Corp. v.*

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<sup>1</sup> "Federal cases interpreting the Federal Rules of Civil Procedure 'are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.'" *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).

1 *Unisys Corp.*, 11 F. Supp. 2d 788, 789 (D. Va. 1998) (holding that if the challenge is that the  
2 complaint fails to state sufficient facts to support subject matter jurisdiction the analysis is similar  
3 to a motion to dismiss for failure to state a claim).

4 ***B. Plaintiff Lacks Standing to Assert Derivative Claims.***

5 33. Rather, the focus is on the essential nature of the claims. *See Kramer v. W. Pac.*  
6 *Indus.*, 546 A.2d 348, 352 (Del. 1988) (“Whether a cause of action is individual or derivative  
7 must be determined from the nature of the wrong alleged and the relief, if any, which could result  
8 if plaintiff were to prevail.”).

9 34. To distinguish between direct and derivative claims, Nevada “courts should  
10 consider only ‘(1) who suffered the alleged harm (the corporation or the suing stockholders,  
11 individually); and (2) who would receive the benefit of any recovery or other remedy (the  
12 corporation or the stockholders, individually)?’” *Parametric Sound Corp. v. Eighth Judicial Dist.*  
13 *Court*, 66689, 2017 WL 4078845, \*7 (Nev. Sept. 14, 2017) (quoting *Tooley v. Donaldson, Lufkin,*  
14 *& Jenrette, Inc.*, 845 A.2d. 1031, 1033 (Del. 2004)).

15 35. Having carefully considered who suffered the harm alleged in the Complaint, and  
16 who would receive the benefit of any recovery, the Court concludes that Plaintiff’s claims are  
17 derivative in nature under the Direct Harm test recently adopted by the Nevada Supreme Court in  
18 *Parametric Sound Corp.*

19 36. Although Plaintiff frames his damages as arising from the exercise of his stock  
20 options and corresponding purchase of Midway shares, reading the Complaint as a whole  
21 indicates the alleged harm suffered by Plaintiff stems from his shares becoming valueless after  
22 acquiring them.

23 37. Claims premised on harm caused by the reduction in value of shares of stock are  
24 inherently derivative as the reduction in value arises from the reduction of the entire value of the  
25 corporation, and such an equal injury is not a specific direct harm to each shareholder  
26 individually. *Id.*

1           38.     Because Plaintiff failed to allege any direct harm, the claims are derivative and  
2 Plaintiff lacks standing to assert such claims.

3     ***C.     Under the Internal Affairs Doctrine, British Columbia Law Vests Exclusive***  
4     ***Jurisdiction in the Supreme Court of British Columbia to Adjudicate Plaintiff's***  
5     ***Derivative Claims.***

6           39.     This case concerns the internal management of a Canadian corporation and that,  
7 as a result, the internal affairs doctrine requires this Court to apply the law of the jurisdiction  
8 where the corporation was incorporated (British Columbia, Canada) to determine whether it has  
9 subject matter jurisdiction to hear Plaintiff's claims. *See Dictor v. Creative Mgmt. Servs., LLC.*,  
10 223 P.3d 332, 335 (Nev. 2010) (noting that Nevada has adopted the Restatement (Second) of  
11 Conflict of Laws as the relevant authority for its choice-of-law jurisprudence in tort cases); *see*  
12 *also Hausman v. Buckley*, 299 F.2d 696, 702 (2d Cir. 1962) (internal affairs doctrine "is well  
13 established and generally followed throughout this country").

14           40.     Because Midway is a British Columbia corporation, its internal affairs are  
15 governed by the Business Corporations Act ("BCA") of British Columbia, which endows its  
16 Supreme Court with exclusive jurisdiction over derivative claims involving British Columbia  
17 corporations. *See* BCA at §§ 232 & 233.

18           41.     Under the BCA, a shareholder or director of a British Columbia corporation must  
19 satisfy two separate and mandatory preconditions before bringing a derivative suit involving the  
20 corporation: (a) the complainant must provide notice to the directors prior to initiating the action;  
21 and (b) the complainant must obtain judicial permission from the Supreme Court of British  
22 Columbia to bring the derivative action prior to filing suit. *See id.*

42. Because Plaintiff failed to make application to and did not obtain leave from the Supreme Court of British Columbia to bring this derivative action on behalf of Midway, Plaintiff lacks standing to assert the derivative claims alleged in the Complaint and this Court cannot properly exercise subject matter jurisdiction over the same. *See Fagin v. Doby George, LLC*, 525 Fed. App'x 618, 619 (9th Cir. 2013) (affirming a Nevada federal district court's dismissal of a shareholder derivative action for lack of subject matter jurisdiction where, after applying the internal affairs doctrine, plaintiffs failed to obtain leave to assert said claims from Canada's Yukon Supreme Court).

***D. Plaintiff Lacks Standing to Assert his Claims Because They Are Property of the Bankruptcy Estate of Midway Gold.***

43. The commencement of a bankruptcy case creates a bankruptcy estate. *Bolick v. Pasioneck*, 2015 WL 1734936, at \*5 (D. Nev. Apr. 16, 2015).

44. Upon creation of the bankruptcy estate, section 541 of the bankruptcy code ("Section 541") mandates that all legal and equitable property interests of the debtor become property of its bankruptcy estate, including all prepetition causes of action held by the debtor. *See* 11 U.S.C. § 541(a).

45. Many courts, including the Ninth Circuit, have held that derivative claims are property of the bankruptcy estate pursuant to Section 541 and, as such, can only be enforced by the debtor or trustee. *See Lapidus v. Hecht*, 232 F.3d 679, 682 (9th Cir. 2000) ("[a] bankruptcy court may enjoin a derivative claim brought by shareholders *because the claim is property of the bankruptcy estate.*") (emphasis added).

46. Because Plaintiff's derivative claims arose prior to the filing of Midway's bankruptcy case (*Midway Gold US Inc. et al.*, Bankr. D. Colo., Case No. 15-16835), said claims belong to Midway's bankruptcy estate and Plaintiff lacks standing to assert the same.



1           47. Furthermore, Midway's proposed *Second Amended Joint Chapter 11 Plan of*  
2 *Liquidation* (the "Plan") expressly transfers Plaintiff's derivative claims to its liquidating trust,  
3 which will become the party with exclusive authority to prosecute such claims for the benefit of  
4 Midway's general unsecured creditors.

5           48. Because Plaintiff's derivative claims are being exclusively administered in  
6 Midway's bankruptcy case for the benefit of its general unsecured creditors pursuant to the Plan,  
7 Plaintiff lacks standing to assert such claims.

8           WHEREFORE, having made the foregoing findings of fact and conclusions of law and  
9 oral findings on the record, and good cause appearing,

10           IT IS HEREBY ORDERED that the *D&O Defendants' Motion to Dismiss Amended*  
11 *Complaint* is **GRANTED**.

12           IT IS HEREBY FURTHER ORDERED that the Hale Defendants' *Motion to Dismiss and*  
13 *Joinder* is **GRANTED**.

14           IT IS HEREBY FURTHER ORDERED that Brunk's *Motion to Dismiss and Joinder* is  
15 **GRANTED**.

16 . . .

17 . . .

18 . . .  
19

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

1 IT IS HEREBY FURTHER ORDERED that Plaintiff is granted leave to amend, provided  
2 that a Second Amended Complaint is filed within 30 days of filing and service of the Notice of  
3 Entry of this Order.

4 IT IS SO ORDERED.

5 DATED this 4 day of <sup>Jan</sup> ~~December~~ 2017.

6 Nancy L. Alie  
7 DISTRICT COURT JUDGE  
8 *AE*

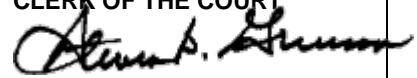
8 Respectfully submitted by:

9   
10 Robert J. Cassity, Esq. (9779)  
11 David J. Freeman, Esq. (10045)  
12 HOLLAND & HART LLP  
13 9555 Hillwood Drive, 2nd Floor  
14 Las Vegas, Nevada 89134  
15 Tel: (702) 669-4600  
16 Fax: (702) 669-4650  
17 bcassity@hollandhart.com  
18 dfreeman@hollandhart.com

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

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

22 10479594\_7



1 ACOM  
2 JAMES R. CHRISTENSEN ESQ.  
3 Nevada Bar No. 3861  
4 James R. Christensen PC  
5 601 S. 6th St.  
6 Las Vegas NV 89101  
7 (702) 272-0406  
8 (702) 272-0415 fax  
9 jim@jchristensenlaw.com  
10 Attorney for Plaintiff, DANIEL E. WOLFUS

11 **EIGHTH JUDICIAL DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13 DANIEL E. WOLFUS,

14 Plaintiff,

15 vs.

CASE NO.: A-17-756971-B  
DEPT NO.: 10

**SECOND AMENDED  
COMPLAINT FOR DAMAGES**

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

Defendants.

1 COMES NOW Plaintiff DANIEL E. WOLFUS ("Wolfus") by and through his  
2 counsel of record and hereby alleges, as follows:

3  
4 **NATURE OF THE CASE**

5 1. Defendants caused Midway Gold Corp. ('Midway') to make material  
6 misstatements of fact and to omit material facts necessary to make the statements  
7 made, in the light of the circumstances under which the statements were made, not  
8 misleading. Defendants did so in public filings and press releases which were relied  
9 upon by Wolfus and which caused Wolfus to purchase Midway's common stock and  
10 to hold and not sell Midway's common stock.  
11

12  
13 2. Wolfus seeks only his own damages. Wolfus does not seek damages for  
14 harm suffered by Midway or any other shareholder of Midway. All recoveries sought  
15 belong solely to Wolfus, not to Midway or any other shareholder of Midway.  
16

17 3. Wolfus brings only his own personal claims and those belonging to his  
18 assignors. Wolfus does not bring any claim that could be brought against any of the  
19 Defendants by Midway.  
20

21 4. Wolfus brings direct claims, which belong to solely to Wolfus and not  
22 Midway or any other shareholder of Midway as found in: *Parametric Sound Corp. v.*  
23 *Eighth Judicial District Court Of The State Of Nevada*, 133 Nev. Advance Opinion 59  
24 (September 14, 2017); *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031  
25 (Del.2004); *Citigroup Inc., v. AHW Investment Partnership*, 140 A.3d 1125 (Del.  
26  
27  
28

1 2016); *American Master Lease LLC v. Idanta Partners, Ltd.*, 225 Cal.App.4th 1451  
2 (2014); and, *Small v. Fritz Companies, Inc.*, 30 Cal.4th 167 (2003).

3  
4 5. Wolfus alleges five causes of action.

5 A. The First Cause of Action is for violation of California's Corporate  
6 Securities Act of 1968, *California Corporations Code* §§ 25000 *et seq*, (the  
7 "Act"). Section 25401 makes it unlawful for Midway to sell its common stock in  
8 California "by means of any written or oral communication that includes an  
9 untrue statement of a material fact or omits to state a material fact necessary to  
10 make the statements made, in the light of the circumstances under which the  
11 statements were made, not misleading." Section 25501 states Wolfus may  
12 recover personally, "the price at which the security was bought plus interest at  
13 the legal rate from the date of purchase." Wolfus purchased shares from  
14 Midway on January 23, 2014 and again on September 19, 2014 for \$100,636 and  
15 \$783,778. Defendants are liable to Wolfus for these damages pursuant to  
16 Sections 25403 and 25504 of the Act. Only Wolfus is entitled to recover  
17 damages for the two transactions.

18  
19 B. The Second Cause of Action is for California common law breach  
20 of fiduciary duty owed by Midway's officers and directors directly to Wolfus as  
21 held in *Meister v. Mensinger*, 230 Cal.App.4th 381 (2014). This cause of action  
22 belongs solely to Wolfus and he is entitled to keep all recoveries thereon. While  
23 Midway also breached its fiduciary duties owed to Wolfus, Midway has not been  
24  
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28

1 joined because of the bankruptcy stay. *Meister* provides that Wolfus may  
2 recover the market value of the stock owned by Wolfus in February 2014 and the  
3 amount paid for the shares purchased on September 19, 2014, with interest at  
4 10% per annum.  
5

6 C. The Third Cause of Action is for California common law aiding  
7 and abetting a breach of fiduciary duty owed by Midway directly to Wolfus as  
8 held in *American Master Lease LLC v. Idanta Partners, Ltd.*, 225 Cal.App.4th  
9 1451 (2014). This cause of belongs solely to Wolfus and he may keep all  
10 recoveries thereon. *American Master Lease* provides that Wolfus may recover  
11 the market value of the stock owned by Wolfus in February 2014 and the amount  
12 paid for the shares purchased on September 19, 2014, with interest thereon at  
13 10% per annum.  
14  
15  
16

17 D. The Fourth Cause of Action is for California common law fraud  
18 committed both by Defendants for inducing Wolfus to purchase shares in  
19 January and September 2014, and inducing Wolfus to hold and not sell the  
20 shares in February 2014, as held in *Small v. Fritz Companies, Inc.*, 30 Cal.4th  
21 167 (2003). This cause of action belongs solely to Wolfus and he is entitled to  
22 keep all recoveries thereon. *Small* provides that Wolfus is entitled to recover the  
23 market value of the stock owned by Wolfus in February 2014 and the amount  
24 paid for the shares purchased on September 19, 2014, with interest thereon at  
25 10% per annum.  
26  
27  
28

E. The Fifth Cause of Action is for California common law negligent misrepresentation committed both by Defendants for inducing Wolfus to purchase shares in January and September 2014 and inducing Wolfus to hold and not sell the shares in February 2014, as held in *Small v. Fritz Companies, Inc.*, 30 Cal.4th 167 (2003). This cause of action belongs solely to Wolfus and he is entitled to keep all recoveries thereon. *Small* provides that Wolfus may recover the market value of the stock owned by Wolfus in February 2014 and amount paid for the shares purchased on September 19, 2014, with interest thereon at 10% per annum.

6. Wolfus does not claim injury from a diminution of value of Midway's common stock, or any equity dilution, caused by issuance of additional shares of stock for inadequate consideration.

## PARTIES

7. Wolfus is an individual who all relevant times resides or resided in Los Angeles and Ventura Counties, California. Wolfus brings this action in his own capacity and as assignee of the rights and claims of The Wolfus Revocable Trust, Christine Wolfus and Daniel Wolfus (JTWROS), Devoney Wolfus, and Stephanie Wolfus. Wolfus is the owner of all claims asserted in this action and is entitled to receive and retain all recoveries sought in this action. Wolfus does not assert any claim belonging to Midway and does not assert any claim for mismanagement of Midway.

1 8. Defendant Kenneth A. Brunk (“Brunk”) is an individual who Wolfus is  
2 informed and believes and thereon alleges was and now is a resident of Colorado.  
3  
4 While with Midway, Brunk's contacts with Nevada were so continuous and systematic  
5 as to render him at home in Nevada.

6 9. Defendant Richard D. Moritz (“Moritz”) is an individual who Wolfus is  
7 informed and believes and thereon alleges was and now is a resident of Colorado.  
8  
9 While with Midway, Moritz's contacts with Nevada were so continuous and  
10 systematic as to render him at home in Nevada.

11  
12 10. Defendant Bradley J. Blacketor (“Blacketor”) is an individual who  
13 Wolfus is informed and believes and thereon alleges was and now is a resident of  
14 Colorado. While with Midway, Blacketor's contacts with Nevada were so continuous  
15 and systematic as to render him at home in Nevada.  
16

17 11. Defendant Timothy J. Haddon (“Haddon”) is an individual who Wolfus  
18 is informed and believes and thereon alleges was and now is a resident of Colorado.  
19  
20 While with Midway, Haddon's contacts with Nevada were so continuous and  
21 systematic as to render him at home in Nevada.

22 12. Defendant Martin M. Hale, Jr., (“Hale”) is an individual who Wolfus is  
23 informed and believes and thereon alleges was and now is a resident of New York.  
24  
25 While with Midway, Hale's contacts with Nevada were so continuous and systematic  
26 as to render him at home in Nevada.  
27  
28



1 13. Defendant Trey Anderson ("Anderson") is an individual who Wolfus is  
2 informed and believes and thereon alleges was and now is a resident of New York.  
3  
4 While with Midway, Anderson's contacts with Nevada were so continuous and  
5 systematic as to render him at home in Nevada.

6 14. Defendant Richard Sawchak ("Sawchak") is an individual who Wolfus is  
7 informed and believes and thereon alleges was and now is a resident of Virginia.  
8  
9 While with Midway, Sawchak's contacts with Nevada were so continuous and  
10 systematic as to render him at home in Nevada.

11  
12 15. Defendant Frank Yu ("Yu") is an individual who Wolfus is informed and  
13 believes and thereon alleges was and now is a resident of Clark County, Nevada.

14 16. Defendant John W. Sheridan ("Sheridan") is an individual who Wolfus is  
15 informed and believes and thereon alleges was and now is a resident of Vancouver,  
16 Canada. While with Midway, Sheridan's contacts with Nevada were so continuous and  
17 systematic as to render him at home in Nevada.  
18

19 17. Defendant Roger A. Newell ("Newell") is an individual who Wolfus is  
20 informed and believes and thereon alleges was and now is a resident of Colorado.  
21  
22 While with Midway, Newell's contacts with Nevada were so continuous and  
23 systematic as to render him at home in Nevada.  
24

25 18. Defendant Rodney D. Knutson ("Knutson") is an individual who Wolfus  
26 is informed and believes and thereon alleges was and now is a resident of Colorado.  
27  
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1 While with Midway, Knutson's contacts with Nevada were so continuous and  
2 systematic as to render him at home in Nevada.

3  
4 19. Defendant Nathaniel E. Klein ("Klein") is an individual who Wolfus is  
5 informed and believes and thereon alleges was and now is a resident of New York.

6 While with Midway, Klein's contacts with Nevada were so continuous and systematic  
7 as to render him at home in Nevada.  
8

9 20. INV-MID, LLC; EREF-MID II, LLC and HCP-MID, LLC (collectively  
10 "Hale Investors") are each Delaware limited liability companies with their principal  
11 places of business in New York.  
12

13 21. The true names, identities and capacities of defendants DOES 1 through  
14 25, inclusive are presently unknown to Wolfus who is informed and believes and  
15 thereon alleges that such defendants are liable to Wolfus in some manner presently  
16 undetermined as a result of the matters complained of herein. Wolfus will seek leave  
17 of Court, if necessary, to amend this First Amended Complaint when the true names,  
18 identities and capacities of said fictitiously-named defendants are identified.  
19  
20

21 **JURISDICTION AND VENUE**

22 22. Among other reasons, jurisdiction and venue are proper in the District  
23 Court of Nevada, County of Clark in that Defendants, or at least one of them, at all  
24 relevant times resided in and still resides in Clark County, Nevada.  
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## COMMON ALLEGATIONS

23. Midway is a Canadian corporation incorporated under the Company Act of British Columbia on May 14, 1996 under a prior name which was changed to its current name on July 10, 2002. Midway became a reporting issuer in the Province of British Columbia on May 16, 1997 and shortly thereafter its common shares were listed on the Vancouver Stock Exchange, the predecessor of the TSX Venture Exchange. Midway subsequently became a reporting issue in the Province of Alberta and at all relevant times, Midway was a reporting company under the Securities Exchange Act of 1934 (the "Exchange Act"). Also during all relevant times, Midway's common shares were listed on both the NYSE Amex exchange and Tier 1 of the TSX.V under the symbol. As a reporting company under the Exchange, Midway has been required to file periodic reports with the Securities and Exchange Committee (the "SEC"). Those reports are public documents which may be accessed over the internet at <https://www.sec.gov/cgi-bin/browse-edgar?company=midway+gold&owner=exclude&action=getcompany>. This website is commonly called Edgar. At all relevant times, Midway's principal executive offices were in Englewood, Colorado; but virtually all of Midway's business operations were in Nevada where its principal mining claims were located.

24. Prior to 2008, Midway was an exploration stage company engaged in the acquisition, exploration, and, if warranted, development of gold and silver mineral properties primarily in Nevada. As an exploration stage company, Midway had no

1 revenues from operations. Instead, Midway relied on capital raised by the sale of its  
2 common shares to fund its operations.

3  
4 25. Prior to November 2008, Midway created its Disclosure Committee  
5 comprised of members of its Board of Directors. Midway reported in public filings  
6 that the purpose of the Disclosure Committee was to ensure that Midway complies  
7 with its timely disclosure obligations as required under applicable Canadian and  
8 United States securities laws. No other formal charter for this committee was ever  
9 publicly disclosed.

10  
11  
12 26. In November 2008, Wolfus became a director of Midway. At the time,  
13 Wolfus had 28 years of experience as a banker and investment banker with substantial  
14 experience in the capital markets. As an outside director, Wolfus was appointed to  
15 several committees of the Board.

16  
17 27. In 2009, Wolfus became the Chairman of the Board and the Chief  
18 Executive Officer of Midway, serving in both capacities until May 18, 2012 when he  
19 was replaced by Brunk. As an officer of Midway, Wolfus ceased to be a member of  
20 any of the Board's committees.

21  
22 28. At some time prior to April 2011, Midway decided to expand its  
23 membership to include both the Chief Executive Officer and the Chief Operating  
24 Officer, at which time Wolfus again became a member of the Disclosure Committee.  
25 Brunk at all relevant times was a member of the Disclosure Committee.  
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1        29.        Wolfus began purchasing common stock of Midway in the open market  
2 in February 2008. As of May 1, 2012, Wolfus and his assignors owned 1,629,117  
3 shares of Midway common stock. In January 2014, Wolfus and/or his assignors  
4 acquired an additional 200,000 shares of Midway common stock. In September 2014,  
5 Wolfus and/or his assignors acquired an additional 1,000,000 shares of common stock  
6 and as of December 23, 2014, and after the sale of some shares, the combined  
7 shareholdings of Wolfus and/or his assignors were 2,402,251 shares of Midway  
8 common stock. Certain of these share purchases were made directly from Midway  
9 after Wolfus ceased to be an officer or director of Midway and were made pursuant to  
10 the exercise of stock options previously granted to Wolfus.  
11

12        30.        At the time Wolfus became Chairman of the Board and CEO, Midway  
13 had the following properties in the exploratory stage where gold mineralization had  
14 been identified: Spring Valley, Pan, The Midway and Golden Eagle properties.  
15 Midway's Thunder Mountain, Roberts Creek, Gold Rock (formerly the Monte) Creek  
16 and Burnt Canyon projects were then in the early stage of gold and silver exploration.  
17 Of these projects, all are in Nevada except the Golden Eagle property in Washington.  
18

19        31.        In October 2008, Midway entered into an exploration agreement and  
20 possible joint venture agreement with a subsidiary of Barrick Gold Corporation for its  
21 Spring Valley project. The Spring Valley project was located 20 miles northeast of  
22 Lovelock, Nevada.  
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1        32.        Of its remaining properties, Midway's Pan Gold Project ("Pan") appeared  
2 to be the most promising. The Pan Gold property was located at the northern end of  
3 the Pancake mountain range in western White Pine County, Nevada, approximately 22  
4 miles southeast of Eureka, Nevada, and 50 miles west of Ely, Nevada.

6        33.        Yu became a director of Midway also in November 2008 and served in  
7 that capacity at least up through June 2015. During that entire period, Yu served as a  
8 member or chairman of Midway's Disclosure Committee and Audit Committee.

10        34.        Newell became a Director of Midway in December of 2009 and  
11 continued in that capacity until August of 2014. During a portion of his tenure as a  
12 director, Newell served as a member of Midway's Disclosure Committee and Audit  
13 Committee.

15        35.        Prior to May, 2010, and based in part on substantial exploration of the  
16 Pan project, Midway made the decision to convert from a purely exploration company  
17 into a gold mining production company using the Pan project as its initial production  
18 mine.

20        36.        In May, 2010, Brunk was hired by Midway as its President and Chief  
21 Operating Officer with the primary assignment to bring the Pan project into  
22 production. In that capacity, Brunk was required to personally oversee both mining  
23 activities in Nevada and permitting activities in Nevada and frequently was in Nevada  
24 to perform these duties. Brunk served in that capacity until May of 2012, at which  
25 time he also became the Chairman of the Board and Chief Executive Officer of  
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1 Midway, replacing Wolfus in those positions. Brunk continued as Chairman of the  
2 Board until August 2014 and as Chief Executive Officer and President until December  
3 2014. At all times Brunk was a director of Midway, he was also a member of  
4 Midway's Disclosure Committee. Midway reported in public filings that Brunk holds  
5 a degree in Metallurgical Engineering from Michigan Technological University and  
6 throughout his career had conducted numerous feasibility studies and has been  
7 responsible for designing, constructing, staffing and operating multiple mining  
8 operations and improving process efficiencies around the world as well. Brunk was  
9 hired by Midway to take its Pan project, discussed below, into production.

10 37. On July 20, 2010, Midway publicly announced the results of a favorable  
11 preliminary economic assessment ("PEA") for the Pan project. The PEA included an  
12 independent audit of an updated mineral resource estimate prepared by the Midway.  
13 The PEA was prepared by Gustavson Associates, LLC ("Gustavson") and was  
14 publicly available.

15 38. Moritz was the Senior Vice President of Operations at Midway from July  
16 2010 to May 2014. Moritz was hired to primarily oversee the Pan project. To perform  
17 these duties, Moritz was frequently in Nevada to directly oversee mining operations.

18 39. On February 3, 2011, Midway filed an 8-K and Press Release with the  
19 SEC in which Midway reported that it was moving forward with its Pan project with  
20 "possible production as early as 2013" and that Midway was working on a  
21 Prefeasibility Study for the Pan project. In its Annual Report filed on Form 10-K with  
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1 the SEC at the same time, Midway stated that it was "currently transitioning itself  
2 from an exploration company to a gold production company with plans to advance the  
3 Pan gold deposit located in White Pine County, Nevada through to production by as  
4 early as 2013."

6 40. On April 4, 2011, Midway issued a press release filed with the SEC in  
7 which it reported that it had secured a "positive Prefeasibility Study" for the Pan  
8 project. Midway also described in significant detail the method and manner by which  
9 Midway intended to mine the gold using conventional heap leaching methods prior to  
10 which the ore would be crushed by the primary in-pit mobile jaw crusher and  
11 secondary and tertiary cone crushers to a nominal 0.5 inches. Barren solution would  
12 then be distributed on the leach pad with drip tube emitters. The entire Prefeasibility  
13 Study performed by Gustavson was filed with SEDAR and the SEC and was publicly  
14 available on Edgar.

18 41. In a September 12, 2011 press release filed with the SEC, Midway  
19 reported its engineering team was in the process of completing a mine plan and a  
20 Feasibility Study for the Pan project and that the environmental team was working to  
21 complete a plan of operations for the proposed mine that will be submitted to the  
22 Bureau of Land Management ("BLM") for evaluation and development of an  
23 Environmental Impact Statement.

26 42. On October 6, 2011, Midway reported in a Press Release that Midway  
27 was negotiating with potential lenders to secure necessary funds for the Pan project.  
28



1 Several major lenders had expressed interest in providing the necessary funds required  
2 for the Pan project.

3  
4 43. On November 1, 2011, Midway filed with the SEC a favorable Updated  
5 Mineral Resource Estimate for the Pan project prepared by Gustavson.

6  
7 44. On November 15, 2011, Midway reported by press release filed with the  
8 SEC the results of the Feasibility Study for the Pan project prepared by Gustavson  
9 ("Feasibility Study"). Midway stated that its mining plan would be to crush,  
10 agglomerate and place the ore on a heap leach pad with recoveries estimated to  
11 average 75%. Midway also reported that the capital costs to build the mine were  
12 estimated to be \$99 million, including \$8.2 million in working capital and \$6.8 million  
13 contingency funds with total production costs projected to be \$824/oz. of gold  
14 recovered. At that time, the price of gold was ~\$1,700/oz.  
15

16  
17 45. On December 20, 2011, Midway filed the Feasibility Study with the SEC.  
18 Excerpts of that Feasibility Study are attached hereto as Exhibit 1 and incorporated  
19 herein by this reference. Among other items, this Study provides a detailed history of  
20 the mineral exploration of the Pan project, estimated gold deposits, an extremely  
21 detailed mining plan, a budget of ~\$100 million for the project along with an  
22 extremely detailed breakdown of the needed equipment, and a projection of  
23 anticipated revenues at different levels of gold prices. Midway participated in the  
24 creation of the Feasibility Study. The Feasibility Study was never publicly updated or  
25 amended and this study formed the basis on which all necessary permits were sought.  
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1       46.       In order to bring the Pan project into production, two major events  
2 needed to occur.

3               A.       First, Midway needed to secure necessary permits, primarily  
4 environmentally related. The most difficult of these permits was the "Record of  
5 Decision" on a Final Environmental Impact Statement processed through the  
6 BLM. Additional environmental permits were also required to be issued by the  
7 State of Nevada. No assurances could be made in 2011 that these permits  
8 would be issued but the issuance of the permits would add significant value to  
9 Midway even if Pan was not taken into production. By year-end 2011, Midway  
10 had begun the permitting process for both the BLM and the Nevada Department  
11 of Environmental Protection ("NDEP"). These permits would be issued  
12 approving a specific mining plan and material changes to the plan would require  
13 modification or amendment of the environmental permits received. At all  
14 times, Midway sought these permits based upon the detailed mining plan set  
15 forth in the Feasibility Study, which required the three-stage crushing and  
16 agglomeration of the ore before it is placed on the heap leaching pad to a height  
17 not to exceed 30'. Generally, the heap leaching process required allowing a  
18 cyanide solution to percolate through the ore allowing the gold to attach to the  
19 cyanide. The resulting gold enriched solution then would go through another  
20 process where the gold was then separated from the cyanide solution after  
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1 which further processing would take place. Most of the permitting process  
2 occurred in Nevada.

3  
4 B. The other event was that Midway would need to generate the  
5 necessary capital not only to fund the plan set forth in the Feasibility Study but  
6 also to fund Midway's other projects and general overhead. At the time,  
7 Midway believed that it would need ~\$120 million in capital to fund the  
8 foregoing up until the time that the Pan project was generating revenues.  
9  
10 Midway was exploring raising this capital both by securing loans and through  
11 the sale of its common stock, which was the way Midway had historically  
12 raised capital.  
13

14 47. On January 9, 2012, Midway issued a Press Release in which it  
15 announced that it qualified as a Development Stage Entity under SEC guidelines and  
16 that it had submitted a mine plan of operations to the BLM and the NDEP. The mine  
17 plan followed the plan set forth in the Feasibility Study with capital costs of ~\$100  
18 million.  
19

20  
21 48. Sheridan became a Director of Midway in February 2012 and continued  
22 in that capacity until June 2015. During a portion of his tenure as a director, Sheridan  
23 served as a member or Chairman of Midway's Disclosure Committee and Audit  
24 Committee.  
25

26 49. Prior to May 2012, Midway was approached by Hale, who was the CEO  
27 and Portfolio Manager of Hale Capital Partners, LP who was seeking to negotiate  
28

1 what became a \$70 million private placement of preferred stock with investors who  
2 Hale would secure. At the time these negotiations commenced, Wolfus was the CEO  
3 and Chairman of the Board of Midway and was the officer primarily involved in  
4 securing capital for Midway to fund its present and future operations. Moreover,  
5 Wolfus had been spending substantial time locating sources to fund the projected costs  
6 of both the Pan project and Midway's other on-going operations. Wolfus was opposed  
7 to the transaction proposed by Hale and Brunk was an ardent supporter of the  
8 transactions.  
9

10  
11 50. In May 2012, Midway's Board of Directors decided to terminate Wolfus  
12 as its Chairman of the Board and Chief Executive Officer and replace him with Brunk.  
13 This change of control was effective May 18, 2012, and publicly reported by Brunk  
14 and Midway on May 21, 2012. Wolfus continued as a director of Midway until its  
15 next annual meeting of shareholders; and, while Wolfus also remained a member of  
16 the Disclosure Committee, he was effectively excluded from all management  
17 decisions, excluded from all negotiations involving the proposed Hale transaction,  
18 never provided with any anticipated public disclosures for review and excluded from  
19 information he would need to review to perform any Disclosure Committee duties.  
20 Wolfus did receive board packages consisting of information provided to all directors  
21 in anticipation of a quarterly Board of Directors meeting and did participate in Board  
22 of Director's meetings which occurred prior to June 2013. From and after May 18,  
23 2012, Wolfus carefully read and considered all press releases by Midway and the  
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1 public filings made by Wolfus usually within a day or two following their release.  
2 Wolfus relied on this material in making all investment decisions concerning Midway  
3 including purchasing additional shares of Midway and whether to continue holding his  
4 and his assignors' Midway shares even though he was no longer involved with the  
5 management of Midway. Wolfus' share holdings were a material part of his  
6 investment portfolio in equity securities. As part of Wolfus' transition out of the  
7 management of Midway, Wolfus and Midway entered into a consulting arrangement  
8 primarily for the purpose of allowing certain of his stock options to vest. Each of the  
9 Defendants then with Midway knew of this purpose and knew that Wolfus' services as  
10 a consultant would never be utilized by Midway.  
11

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13  
14 51. On August 2, 2012, the Board of Directors of Midway voted to increase  
15 the size of the Board from 5 to 6 members and appoint Klein as a director. Klein at  
16 the time was a Vice President of Hale Capital Partners. At the time of this  
17 appointment, Hale and Hale Capital Partners, LP were continuing to negotiate the  
18 terms of the proposed Hale transaction, which at the time had not been publicly  
19 disclosed. Klein's directorship provided Hale and Hale Capital Partners, LP with  
20 access to Midway's books and records and staff.  
21

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23  
24 52. By press release dated August 16, 2012, Midway and Brunk reported that  
25 engineering and permitting for the Pan project was advancing at a "rapid pace."  
26

27 53. By press release dated September 10, 2012, Midway and Brunk reported  
28 that it was on schedule for "start-up of production in mid-2014" on the Pan project.

1        54.        By 8-K filed with the SEC and by Press Release also filed with the SEC  
2 and both dated November 21, 2012, Midway announced that agreements had been  
3 signed for the private placement of \$70 million in Series A Preferred Shares of  
4 Midway to the Hale Investors and generally described the terms and conditions of that  
5 sale. True and correct copies of that 8-K and Press Release are attached hereto as  
6 Exhibits 2 and 3, respectively, and incorporated herein by this reference. Wolfus is  
7 informed and believes and thereon alleges that at all relevant times the Hale Investors  
8 were controlled by Hale. Moreover, one of the terms of the forgoing transaction was  
9 the creation of a budget and work program committee, on which Hale or another  
10 director selected solely by the Hale Investors were required members. The purpose of  
11 this committee was to review and approve Midway's annual business and financing  
12 plans and capital and operating budgets or modifications thereto and its decisions had  
13 to be unanimous. Wolfus is informed and believes and thereon alleges that once this  
14 committee was formed, Hale and the Hale Investors acquired effective control of  
15 Midway and the Pan project.

16  
17        55.        On December 13, 2012, Midway filed an 8-K and Press Release with the  
18 SEC, a true and correct copy of which is attached hereto as Exhibit 4 and incorporated  
19 herein by this reference. Exhibit 4 reports that the Hale transaction had closed, that  
20 Hale had become a director of Midway, and that Klein had resigned as a director,  
21 although he continued to attend Board meetings thereafter. In addition, Midway  
22 reported the formation of the "Budget Work Plan Committee as alleged above with  
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1 Brunk, Hale, Newell and Sheridan as its members. At all relevant times thereafter,  
2 Hale remained a director and a member of the Budget Work Plan Committee of  
3 Midway.  
4

5 56. On March 22, 2013, Midway announced that a draft environmental  
6 impact statement was available for public comment. Wolfus is informed and believes  
7 and thereon alleges that this statement was based on the mining plan set forth in the  
8 Feasibility Study.  
9

10 57. On April 19, 2013, Midway issued its Definitive Proxy Statement which  
11 was filed with the SEC. This statement disclosed that the Board had not nominated  
12 Wolfus as a director but had nominated Knutson as a director and had nominated  
13 Klein as a director selected by the Hale Investors.  
14

15 58. On June 20, 2013, Midway held its annual meeting of shareholders.  
16 Brunk, Hale, Newell, Sheridan, Yu, Knutson and Klein were each elected as directors.  
17 Wolfus ceased to be a director at this time, although Wolfus last participation with  
18 Midway's Board ceased some time before.  
19  
20

21 59. On July 30, 2013, Midway issued and filed with the SEC a Press Release  
22 dated July 30, 2013, a true and correct copy of which is attached hereto as Exhibit 5  
23 and incorporated herein by this reference. In that release, Midway reported that it was  
24 exploring ways to reduce costs for the Pan project, expected to issue a revised  
25 Feasibility Study in the third quarter of 2013, had made significant progress in  
26 permitting, was pursuing a combination of project and equipment financing  
27  
28

1 alternatives, had received proposals from several major commercial funding sources to  
2 secure the necessary capital to fund the Pan project until a positive cash flow had been  
3 achieved, and expected to pour gold in August 2014.  
4

5 60. On November 17, 2013, Midway issued and filed with the SEC a Press  
6 Release dated September 17, 2013, a true and correct copy of which is attached hereto  
7 as Exhibit 6 and incorporated herein by this reference. In this release, Midway  
8 reported that it had conducted tests of ore from South Pan and determined that it did  
9 not need to be crushed prior to leaching, and that a 92% recovery rate could be  
10 achieved after 58 days of leaching the ore at a height of 15'. This height is half of the  
11 30' height which the Feasibility Study called for. Midway stated that leaching  
12 uncrushed ore, called Run of Mine, would avoid the need to secure crushing  
13 equipment until operations moved to other areas of the Pan project. Midway also  
14 reported that it had retained Sierra Partners to assist it in finding the necessary capital  
15 to fund operations.  
16

17 61. At year-end 2013 and in addition to Pan, Midway was moving forward  
18 with its Gold Rock project, also in White Pine County Nevada, as its second operating  
19 gold mine. Midway's Spring Valley project was also progressing primarily funded by  
20 Barrick.  
21

22 62. On December 5, 2013, Blacketor became the Chief Financial Officer and  
23 Senior Vice President of Midway. Blacketor was also a member of the Disclosure  
24 Committee.  
25  
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1        63.        On December 20, 2013, Midway issued and filed with the SEC a Press  
2 Release, a true and correct copy of which is attached hereto as Exhibit 7 and  
3  
4 incorporated herein by this reference. In this release, Midway announced that it had  
5 received its Record of Decision for the Pan project which completes the BLM  
6 permitting process.

7  
8        64.        As of December 31, 2013, Brunk, Hale, Newell, Sheridan, Yu, Knutson  
9 and Klein were each directors of Midway; Brunk was the Chairman, President and  
10 Chief Executive officer of Midway; Blacketor was a Senior Vice President and Chief  
11 Financial Officer of Midway; Moritz was the Senior Vice President of Operations of  
12 Midway; Brunk, Blacketor, Newell, Yu and Klein were each members of the  
13 Disclosure Committee of Midway; Sheridan, Yu and Knutson were each members of  
14 the Audit Committee of Midway; Brunk, Hale, Sheridan, Yu and Klein were each  
15 members of the Budget/Work Plan Committee; and Newell, Sheridan and Yu were  
16 each members of the Environment, Health and Safety Committee. In those capacities,  
17 each was responsible for insuring that Midway publicly disclosed all material  
18 information concerning the Pan project and that all publicly disclosed information  
19 concerning the Pan project was true and complete, was not misleading and did not  
20 omitted material facts. The foregoing defendants are collectively referred to as the  
21 "2013 Control Defendants."

22  
23  
24        65.        As of December 13, 2013, the 2013 Control Defendants knew each of the  
25 following facts ("2013 Undisclosed Facts") to be true, knew that each of the following  
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28

1 facts would be material to any reasonable investor in Midway including Wolfus, and  
2 knew that none of those facts had been disclosed to the public generally or to Wolfus:

3  
4 A. Midway had been unable to raise sufficient cash either in the form  
5 of equity or debt to allow it to complete the Pan project in the manner set forth  
6 in the Feasibility Study as well as fund on-going operations until the Pan project  
7 produced sufficient revenues to cover those expenses;

8  
9 B. Hale and the Hale Investors had blocked any consideration of the  
10 sale of either Midway's interest in the Spring Valley project or the Gold Rock  
11 project or any other material assets to generate additional revenues;

12  
13 C. The environmental and other permits secured by Midway for the  
14 Pan project were based upon and required Midway to conduct mining  
15 operations in accordance with the mining plan submitted which called for the  
16 crushing and agglomeration of ore before it was placed on the leach pads and  
17 Midway had taken no steps to cause those permits to be modified to allow  
18 Midway to proceed using Run of Mine for the South Pit of the Pan project; and

19  
20 D. Modifying the permits to permit Run of Mine would have been  
21 time consuming delaying the time when Midway could start the leaching  
22 process.

23  
24  
25 66. In late December and in early January 2014, Wolfus needed to decide  
26 whether to exercise some of his Midway stock options which would soon be expiring.  
27 In order to make this investment decision, Wolfus carefully reviewed and considered  
28

1 Midway's press releases and public filings, primarily those which were issued after he  
2 ceased to be Midway's Chief Executive Officer. At the time, Wolfus had no reason to  
3 believe that any of the factual statements contained therein were false or that Midway  
4 had failed to omit material facts. In reliance thereon and on January 7, 2014, Wolfus  
5 notified Midway of his intention to exercise some of his stock options. Wolfus is  
6 informed and believes and thereon alleges that Defendants, and each of them, were  
7 aware of this exercise. At the time Wolfus exercised these options he was not aware  
8 of any of the 2013 Undisclosed Facts, had no way of learning the 2013 undisclosed  
9 facts except from the 2013 Control Defendants, would not have exercised any of his  
10 options and would instead have sold his and his assignors' remaining Midway  
11 common shares when Midway's stock peaked in February 2014.  
12

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15  
16 67. On January 15, 2014, Midway issued and filed with the SEC a Press  
17 Release, a true and correct copy of which is attached hereto as Exhibit 8 and  
18 incorporated herein by this reference. In that release, Midway reported that the Pan  
19 project was "fully permitted and construction is underway with completion estimated  
20 for Q3 2014."  
21

22  
23 68. Between January 7 and January 23, 2014, neither Midway nor any of the  
24 defendants provided Wolfus with any information not contained in Midway's then  
25 public filings, including the 2013 Undisclosed Facts.  
26  
27  
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1        69.        On January 23, 2014, Wolfus consummated his stock option exercise  
2 purchasing 200,000 shares for \$112,000 Canadian dollars which was then \$100,636  
3 US dollars.  
4

5        70.        Wolfus thereafter and on a daily basis checked on the market price of  
6 Midway's stock. When Midway's stock peaked on or about February 14, 2014, at  
7 \$1.39<sup>1</sup>, Wolfus decided to continue to hold his Midway shares and his assignors made  
8 the same decision based upon Wolfus advice. At the time Wolfus and his assignors  
9 made this decision to hold and not sell their Midway stock, Wolfus remained unaware  
10 of the 2013 Undisclosed Facts and also the fact that the Pan project was not fully  
11 permitted. Had Wolfus known any of the 2013 Undisclosed Facts or that the Pan  
12 project was not fully permitted, he and his assignors would have sold all of the  
13 Midway shares.  
14  
15  
16

17        71.        In its March 13, 2014, Annual Report on form 10-K, Midway reported  
18 that ore from the South Pan pit would be process Run of Mine and would not be  
19 crushed or agglomerated as provided in the Feasibility Study or the mining plan  
20 submitted to secure the necessary permits for the Pan project.  
21

22        72.        In a Press Release issued the same day, Midway again reported that the  
23 Pan project was fully permitted and that construction was underway.  
24

25        73.        On March 19, 2014, Midway announced in a Press Release that it has  
26 selected Ledcor CMI, Inc. as its mining contractor for the Pan project.  
27

28 \_\_\_\_\_  
<sup>1</sup> The high at market closing per Bloomberg.

1        74.        On April 24, 2014, Midway issued a Press Release. But for the hand  
2 interlineations, Exhibit 9 attached hereto and incorporated herein by this reference is a  
3 true and correct copy of that release. In that release, Midway announced its intention  
4 to reduce the capital costs for the Pan project as set forth in the Feasibility Study by  
5 using contract miners to mine the ore and by proceeding Run of Mine on the South Pit  
6 of the Pan project. Midway stated that Moritz had approved the release and that  
7 Midway was "well-funded."  
8

9  
10        75.        On May 16, 2014, Midway reported that Moritz had resigned.  
11

12        76.        Midway's intention to use contract mining and Run of Mine was repeated  
13 in its May 21, 2014, quarterly report filed on Form 10-Q with the SEC.  
14

15        77.        On May 22, 2014, Midway issued and filed with the SEC a Press  
16 Release, a true and correct copy of which is attached hereto as Exhibit 10 and  
17 incorporated herein by this reference. This release announced the execution of a \$55  
18 million credit facility with Commonwealth Bank of Australia for the Pan project.  
19

20        78.        On May 30, 2014, Midway filed with the SEC a prospectus for the sale of  
21 ~\$25 million worth of common stock in a prearranged sale. The prospectus updated  
22 an earlier registration statement. The funds were to be used in substantial part for the  
23 Pan project. Under applicable securities laws, this prospectus was required to disclose  
24 all material facts related to the Pan project, among other disclosures. However, this  
25 prospectus failed to disclose any of the 2013 Undisclosed Facts or any of the 2014  
26  
27  
28

1 Undisclosed Facts alleged below. In June 2014, Midway reported in a Press Release  
2 filed with the SEC that it completed this sale transaction.

3 79. On June 19, 2014, Sawchak became a director of Midway and Knutson  
4 ceased to be a director of Midway. During a portion of his tenure as a director,  
5 Sawchak served as Chairman of Midway's Audit Committee.  
6

7 80. On July 21, 2014, Midway issued and filed with the SEC a Press Release  
8 announcing that it had closed on its Credit Facility from Commonwealth Bank of  
9 Australia. Wolfus is informed and believes and thereon alleges that this Credit  
10 Facility was the largest loan Midway was able to secure.  
11  
12

13 81. In July 2014, there was a flood at the Pan project which delayed the  
14 project. The flood was not reported until Midway's September 15, 2014, press release  
15 filed with the SEC.  
16

17 82. In its August 6, 2014, quarterly report filed on Form 10-Q with the SEC,  
18 Midway reported that it had made a 5-year contract mining deal with Ledcor and had  
19 paid a \$500,000 mobilization fee. On September 15, 2014, Midway reported in a  
20 Press Release filed with the SEC that Ledcor had in fact mobilized on site on July 21,  
21 2014. At no time did Midway disclose what control, if any, it had over the timing of  
22 Ledcor's mining operations or the control that it had over Ledcor's loading ore on the  
23 leach pads. Loading of the ore on the leach pads according to the applicable permits  
24 then effect had to be carefully monitored and supervised by qualified individuals and  
25 only after the ore had been crushed and agglomerated in the manner described in the  
26  
27  
28

1 Feasibility Study and the mining plan. Even if the ore was to be loaded on the leach  
2 pads Run of Mine, it still had to be carefully monitored and supervised by qualified  
3 individuals and only to a height not exceeding 15'. Additional ore could not be loaded  
4 on the leach pad until the approximately 2 month leaching process had occurred.  
5  
6 Wolfus was not aware of these facts until after June 2015.

7  
8 83. By Press Release dated August 6, 2014, and filed with the SEC, Midway  
9 announced that Brunk would be leaving Midway but he remained with Midway until  
10 December 2014.

11  
12 84. By Press Release dated August 19, 2014 and filed with the SEC, Midway  
13 announced the "retirement" of Newell and the appointment of Haddon as Chairman of  
14 the Board, replacing Brunk in that role. Haddon also became a member of the  
15 Environment, Health and Safety Committee of Midway.  
16

17 85. As of August 31, 2013, Brunk, Hale, Sawchak, Sheridan, Yu, Haddon  
18 and Klein were each directors of Midway; Haddon was Chairman of the Board, Brunk  
19 was the President and Chief Executive officer of Midway; Blacketor was a Senior  
20 Vice President and Chief Financial Officer of Midway; Brunk, Blacketor, Yu and  
21 Klein were each members of the Disclosure Committee of Midway; Sheridan, Yu and  
22 Sawchak were each members of the Audit Committee of Midway; Brunk, Hale,  
23 Sheridan, Yu and Klein were each members of the Budget/Work Plan Committee; and  
24 Haddon, Sheridan and Yu were each members of the Environment, Health and Safety  
25 Committee. In those capacities, each was responsible for insuring that Midway  
26  
27  
28

1 publicly disclosed all material information concerning the Pan project and that all  
2 publicly disclosed information concerning the Pan project was true and complete, was  
3 not misleading and did not omitted material facts. The foregoing defendants are  
4 collectively referred to as the "2014 Control Defendants."

6 86. As of August 31, 2014, the 2014 Control Defendants knew each of 2013  
7 Undisclosed Facts and the following addition facts ("collectively the 2014  
8 Undisclosed Facts") to be true, knew that each of those facts would be material to any  
9 reasonable investor in Midway including Wolfus, and knew that none of those facts  
10 had been disclosed to the public generally or to Wolfus:  
11

13 A. Ledcor was poised to commence mining operations at Pan loading  
14 ore directly on the leach pads but Midway did not have either a "qualified"  
15 person or a knowledgeable employee on site to supervise the loading of the ore  
16 on the leach pads;  
17

18 B. Midway had not sought or received modified permits to allow it to  
19 deviate from the mining plan submitted for the permits and as contained in the  
20 Feasibility Study; and  
21

22 C. Midway did not have the necessary facilities to process the gold  
23 solution once the leaching had been completed and it would be a considerable  
24 period before those facilities were constructed and permitted for operation.  
25

26 87. In late August and early September 2014, Wolfus needed to decide  
27 whether or not to exercise some of his Midway stock options which would soon be  
28



1 expiring. In order to make this investment decision, Wolfus carefully reviewed and  
2 considered Midway's press releases and public filings, primarily those which were  
3 issued after he purchase shares in January 2014. At the time, Wolfus had no reason to  
4 believe that any of the factual statements contained therein were false or that Midway  
5 had failed to omit material facts. In reliance thereon and on September 5, 2014,  
6 Wolfus notified Midway of his intention to exercise some of his stock options.  
7

8 Wolfus is informed and believes and thereon alleges that defendants and each of them  
9 were aware of this exercise. At the time Wolfus exercised these options he still was  
10 not aware of any of the 2013 Undisclosed Facts or the 2014 Undisclosed Facts, had no  
11 way of learning those facts except from the 2014 Control Defendants, would not have  
12 exercised any of his options had he known those facts.  
13

14 88. Between September 5 and 19, 2014, neither Midway nor any of the  
15 defendants provided Wolfus with any information not contained in Midway's then  
16 public filings, including the 2013 Undisclosed Facts and the 2014 Undisclosed Facts.  
17

18 89. On September 19, 2014, Wolfus consummated his stock option exercise  
19 purchasing 1,000,000 shares for \$860,000 Canadian dollars which was then \$783,778  
20 US dollars.  
21

22 90. On September 15, 2014, Midway announced by Press Release filed with  
23 the SEC that Ledcor had commenced mining operations. The release further  
24 suggested that the facilities to process the mine would be ready by the end of  
25 September.  
26  
27  
28

1 91. On October 14, 2014, Midway announced that William Zisch would  
2 become President and Chief Executive Officer of Midway on or about December 10,  
3 2014 and that Brunk would depart Midway on Mr. Zisch's start date.  
4

5 92. By Current Report filed on form 8-K with the SEC and dated November  
6 4, 2014, Midway announced the resignation of Klein and the appointment of  
7 Anderson as a director by the Hale Investors. Anderson also became a member of the  
8 Budget/Work Plan Committee of Midway.  
9

10 93. In its November 16, 2014, quarterly report on Form 10-Q filed with the  
11 SEC, Midway again provided only favorable information concerning the Pan project.  
12

13 94. By Press Release dated December 1, 2014 and filed with the SEC,  
14 Midway reported that it had begun receiving funds on its Credit Facility.  
15

16 95. On June 22, 2015, Midway announced that it was filing a voluntary  
17 petition for relief under Chapter 11 of the Bankruptcy Code and shortly thereafter filed  
18 for bankruptcy.  
19

20 96. As a result of the Midway Bankruptcy, all or virtually all of Midway's  
21 assets have been sold and there are no funds or recoveries by common shareholders of  
22 Midway.  
23

1           97.       Following the bankruptcy filing, Wolfus has learned or is otherwise  
2 informed and believed and thereon alleges that the following facts are true:

3  
4           A.       As of the end of 2013, Midway lacked sufficient resources in the  
5 form of capital or debt financing to bring the Pan project to a successful mining  
6 operation;

7  
8           B.       Hale and the Hale Investors blocked Midway from selling assets to  
9 create necessary capital;

10           C.       In late 2013 or early 2014, material disagreements arose between  
11 Brunk and Hale, which resulted in Hale taking effective control of Midway and  
12 the Pan project even though Hale lacked the ability to manage the Pan project;

13           D.       The ore in the entire Pan project was extremely clayey and would  
14 need to be crushed and agglomerated prior to leaching in order to profitable and  
15 timely extract gold; but rather than cut other costs so that the crushing and  
16 agglomeration equipment could be acquired, defendants, and each of them,  
17 decided not to purchase this necessary equipment;

18           E.       Costly equipment was purchased by Midway which was not  
19 permitted to be used on the Pan project resulting in costly delays;

20           F.       Midway never received the appropriate permits for Run of Mine  
21 operations;

1           G.     Midway allowed Ledcor to overload the leach pads in a manner  
2           which violated its operating permits and resulted in an inability to successfully  
3           leach the gold from the ore;  
4

5           H.     Midway allowed Ledcor to begin loading the leach pads before it  
6           was capable of either performing the necessary heap leaching or capable of  
7           processing and refining for sale the resulting gold solution.  
8

9           98.     Effective June 2, 2016, Wolfus, Brunk, Moritz, Blacketor, Haddon, Hale,  
10          Anderson, Sawchak, Yu, Sheridan, Newell, Knutson and Klein entered into a tolling  
11          agreement, a true and correct copy of which is attached hereto as Exhibit 11 and  
12          incorporated herein by this reference. This agreement tolled the statute of limitations  
13          on all claims from June 2, 2016 through September 25, 2016.  
14

15  
16                               **FIRST CAUSE OF ACTION**  
17                               **(SECURITIES FRAUD AGAINST**  
18                               **THE 2013 AND 2014 CONTROL DEFENDANTS)**  
19

20           99.     Wolfus realleges the allegations contained in Paragraphs 1 through 98 as  
21          though fully set forth herein.  
22

23           100.    This is a claim for securities fraud based upon the California Corporate  
24          Securities Law of 1968, California *Corporations Code* § 25000, *et seq.* (the "Act").  
25          Section 25401 of the Act makes it unlawful for Midway to sell its common stock in  
26          California "by means of any written or oral communication that includes an untrue  
27          statement of a material fact or omits to state a material fact necessary to make the  
28

1 statements made, in the light of the circumstances under which the statements were  
2 made, not misleading." Section 25501 Act creates a private right of action for a  
3 purchaser and makes Midway, as the seller, liable to Wolfus, as the purchaser, for "the  
4 price at which the security was bought plus interest at the legal rate from the date of  
5 purchase." Wolfus purchased shares from Midway on January 23, 2014 and again on  
6 September 19, 2014 for \$100,636 US dollars and \$783,778, respectively and the legal  
7 rate of interest thereon is at 10% per annum. In addition to Midway, Defendants, and  
8 each of them, are liable for these damages pursuant to Sections 25403 and 25504.  
9 Only Wolfus is entitled to recover these damages for these two transactions.  
10 Defendants, and each of them, knew that at the time of purchase, Wolfus was a  
11 California resident entitled to pursue relief under the Act. All purchases of Midway's  
12 common stock were made by Wolfus in California.

13 101. Midway's common shares are securities as defined in California  
14 *Corporations Code* § 25019.

15 102. On January 23, 2014, Wolfus purchased in California 200,000 shares of  
16 Midway's common stock directly from Midway at a purchase price of \$.56 Canadian  
17 dollars per share or approximately \$.50 US dollars per share. At that time, Midway's  
18 common stock was selling on the NYSE Amex exchange at \$1.27 US dollars per share  
19 and its price was rising.

20 103. Midway was the issuer of the 200,000 shares purchased by Wolfus and as  
21 such was liable for any written or oral communication contained in its public filings  
22  
23  
24  
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28

1 that included any untrue statement of a material fact or omits to state a material fact  
2 necessary to make the statements made, in light of the circumstances under which the  
3 statements were made, not misleading.  
4

5 104. Each of the 2013 Control Defendants are jointly and severally liable to  
6 Wolfus with Midway because of their positions as officers, directors and committee  
7 members of Midway and as such are deemed to be "controlling persons" under the  
8 Act. Moreover, each of the 2013 Control Defendants controlled Midway and had the  
9 ability and duty to ensure that its public filings were true, correct and complete, were  
10 not misleading and did not fail to disclose material facts.  
11  
12

13 105. In violation of California *Corporations Code* § 25401, the 2013 public  
14 filings by Midway which discussed the Pan project were materially false and  
15 misleading by failing to timely disclose each of the 2013 Undisclosed Facts and the  
16 failure by the 2013 Control Defendants to disclose the 2013 Undisclosed Facts was  
17 intentional and was done to encourage investors to retain and purchase Midway's  
18 common stock.  
19  
20

21 106. In purchasing the 200,000 shares in January 2014, Wolfus had carefully  
22 read and reviewed and relied on the public filings of Midway and was unaware of the  
23 2013 Undisclosed Facts. Had Wolfus known any of the 2013 Undisclosed Facts,  
24 Wolfus would not have purchased any shares in January 2014 or would have sold both  
25 his and his assignors common stock when the stock reached its peak in February 2014.  
26  
27  
28

1 107. On September 19, 2014, Wolfus purchased in California 1,000,000 shares  
2 of Midway's common stock directly from Midway at a purchase price of \$.86  
3  
4 Canadian dollars per share, which was approximately \$.78 US dollars per share.

5 108. Midway was the issuer of the 1,000,000 shares purchased by Wolfus and  
6 as such was liable for any written or oral communication contained in its public filings  
7 that included any untrue statement of a material fact or omits to state a material fact  
8 necessary to make the statements made, in light of the circumstances under which the  
9 statements were made, not misleading.  
10

11 109. Each of the 2014 Control Defendants are jointly and severally liable to  
12 Wolfus with Midway because of their positions as officers, directors and committee  
13 members of Midway and as such are deemed to be "controlling persons" under the  
14 Act. Moreover, each of the 2014 Control Defendants controlled Midway and had the  
15 ability and duty to ensure that its public filings were true, correct and complete, were  
16 not misleading and did not fail to disclose material facts.  
17  
18

19 110. In violation of California *Corporations Code* § 25401, the pre-September  
20 2014 public filings by Midway which discussed the Pan project were materially false  
21 and misleading by failing to timely disclose each of the 2014 Undisclosed Facts and  
22 the failure by the 2014 Control Defendants to disclose the 2014 Undisclosed Facts was  
23 intentional and was done to encourage investors to retain and purchase Midway's  
24 common stock.  
25  
26  
27  
28

1 111. In purchasing shares in September 2014, Wolfus carefully reviewed and  
2 relied on the public filings of Midway and was unaware of the 2013 Undisclosed Facts  
3 or any of the 2014 Undisclosed Facts. Had Wolfus known any of the 2014  
4 Undisclosed Facts or any of the 2013 Undisclosed Facts, Wolfus would not have  
5 purchased any shares in September 2014.  
6

7  
8 112. As a result, Wolfus has been damaged in an amount of \$884,414.00 plus  
9 interest thereon at 10% per annum from date of purchase and reasonable attorney fees.  
10

11 **SECOND CAUSE OF ACTION**  
12 **(BREACH OF FIDUCIARY DUTY**  
13 **AGAINST THE 2013 AND 2014 CONTROL DEFENDANTS)**

14 113. Wolfus realleges the allegations contained in Paragraphs 1 through 98,  
15 102, 103, 105 through 107 and 111, as though fully set forth herein.  
16

17 114. This is a claim for breach of fiduciary duty against the 2013 Control  
18 Defendants arising out of their failure to disclose the 2013 Undisclosed Facts prior to  
19 Wolfus stock purchase in January 2014 and against the 2014 Control Defendants for  
20 their failure to disclose the 2013 Undisclosed Facts and the 2014 Undisclosed Facts  
21 prior to Wolfus stock purchase in September 2014. This claim is based on California  
22 common law arising out of breaches of fiduciary duty owed by Midway's officers and  
23 directors directly to Wolfus and Wolfus' assignors as so held in *Meister v. Mensinger*,  
24 230 Cal.App.4th 381 (2014). This is a cause of action which belongs solely to Wolfus  
25 and Wolfus' assignors who are entitled to keep all recoveries thereon. While Midway  
26  
27  
28



1 also breached its fiduciary duties owed to Wolfus and Wolfus' assignors, Midway has  
2 not been joined as a culpable defendant because of the bankruptcy stay precluding  
3 Wolfus from doing so. California law, as set forth in *Meister*, provides that Wolfus is  
4 entitled to recover all damages proximately caused by the breach which is the market  
5 value of the stock then owned by Wolfus and Wolfus' assignors in February 2014 and  
6 the consideration paid by Wolfus for the shares purchased on September 19, 2014,  
7 together with interest thereon at 10% per annum.  
8

9 115. Each of the 2013 Control Defendants and 2014 Control Defendants were  
10 fiduciaries and owed Wolfus the fiduciary duty of full disclosure of all material facts  
11 then existing prior to Wolfus' exercise of his stock options in 2014.  
12

13 116. Each of the 2013 Control Defendants and 2014 Control Defendants  
14 breached their fiduciary duties to Wolfus by failing to disclose the 2013 Undisclosed  
15 Facts prior to January 1, 2014 and by failing to disclose the 2014 Undisclosed Facts  
16 prior to September 2014.  
17

18 117. Had Wolfus known any of the 2013 Undisclosed Facts, Wolfus would  
19 have sold all of his shares of Midway and all of his assignors' shares of Midway in  
20 February 2014, when Midway's stock reached its peak and would not have purchased  
21 any additional shares in January or September 2014.  
22  
23  
24  
25  
26  
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28

1 118. As a result of defendants' breach of their fiduciary duties to Wolfus,  
2 Wolfus has been damaged in an amount to be proven at trial, but no event less than  
3 \$3,000,000. Wolfus is entitled to interest at 10% per annum.  
4

5 119. Defendants conduct was fraudulent entitling Wolfus to an award of  
6 punitive damages in an amount to be proven at trial.  
7

8 **THIRD CAUSE OF ACTION**  
9  
10 **(AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY**  
11 **AGAINST ALL DEFENDANTS)**

12 120. Wolfus realleges the allegations contained in Paragraphs 1 through 98,  
13 102, 103, 105 through 107, 111, 115, 117 and 119, as though fully set forth herein.  
14

15 121. This is a claim for California common law aiding and abetting a breach  
16 of fiduciary duty owed by Midway directly to Wolfus and Wolfus' assignors for which  
17 Defendants, and each of them, aided and abetted as so held in *American Master Lease*  
18 *LLC v. Idanta Partners, Ltd.*, 225 Cal.App.4th 1451 (2014). This is a cause of action  
19 which belongs solely to Wolfus and Wolfus' assignors who are entitled to keep all  
20 recoveries thereon. While Midway also breached its fiduciary duties owed to Wolfus  
21 and Wolfus' assignors, Midway has not been joined as a culpable defendant because of  
22 the bankruptcy stay precluding Wolfus from doing so. California law, as set forth in  
23 *American Master Lease*, provides that Wolfus is entitled to recover all damages  
24 proximately caused by the breach which is the market value of the stock then owned  
25 by Wolfus and Wolfus' assignors in February 2014 and the consideration paid by  
26  
27  
28

1 Wolfus for the shares purchased on September 19, 2014, together with interest thereon  
2 at 10% per annum.

3 122. Wolfus is informed and believes and thereon alleges that Does 1 through  
4  
5 20 are the underlying beneficial owners of the Hale Investors and as such indirectly  
6 through Hale controlled the Pan project and Midway at all times from and after June  
7 2013.  
8

9 123. Midway at all times after Wolfus ceased to be a member of Midway's  
10 Board of Directors owed Wolfus of full disclosure of all relevant facts related to the  
11 Pan project prior to selling 1,200,000 shares of Midway's common stock to Wolfus in  
12 2014.  
13

14 124. Midway breached its fiduciary duties to Wolfus in 2014 by failing to  
15 disclose the 2013 Undisclosed Facts prior to January 2014 and by failing to disclose  
16 the 2014 Undisclosed Facts prior to September 2014.  
17

18 125. Defendants, and each of them, knew of Midway's fiduciary duties to  
19 Wolfus and materially aided and abetted Midway in breaching its fiduciary duties.  
20

21 126. Wolfus has been damaged in an amount to be proven at trial, but no event  
22 less than \$3,000,000. Wolfus is entitled to interest at 10% per annum.  
23  
24  
25  
26  
27  
28

**FOURTH CAUSE OF ACTION**

**(FRAUD AGAINST THE 2013 AND 2014 CONTROL DEFENDANTS)**

127. Wolfus realleges the allegations contained in Paragraphs 1 through 98, 102, 103, 105 through 107, 111 and 109, as though fully set forth herein.

128. This is a claim for California common law and statutory fraud committed both by Midway and Defendants, and each of them, for inducing Wolfus to purchase shares in January and September 2014 and inducing Wolfus and Wolfus' assignors to hold and not sell their shares in February 2014. This claim is based on the holding in *Small v. Fritz Companies, Inc.*, 30 Cal.4th 167 (2003). This is a cause of action which belongs solely to Wolfus and Wolfus' assignors who are entitled to keep all recoveries thereon. While Midway also defrauded Wolfus and Wolfus' assignors, Midway has not been joined as a culpable defendant because of the bankruptcy stay precluding Wolfus from doing so. California law, as set forth in *Small*, provides that Wolfus is entitled to recover all damages proximately caused by the fraud which is the market value of the stock then owned by Wolfus and Wolfus' assignors in February 2014 and the consideration paid by Wolfus for the shares purchased on September 19, 2014, together with interest thereon at 10% per annum.

129. In late December and in early January, Wolfus carefully reviewed all public filings and press releases of Midway issued after he ceased to be Midway's Chief Executive Officer in order to decide whether he should purchase additional shares of Midway or whether he should not make any further purchases and instead

1 sell both his Midway shares and those of his assignors. Wolfus' assignors are  
2 immediate family members who totally relied on Wolfus' investment decisions.  
3  
4 Wolfus was primarily concerned with the status of the Pan project and the likelihood  
5 that this project would begin profitably mining gold and be revenue positive. Wolfus  
6 determined from those public statements and the absence of the 2013 Undisclosed  
7 Facts that profitable mining operations would result in a substantial increase in the  
8 value of their combined Midway shares.  
9

10 130. Following Wolfus' share purchases in January 2014, Wolfus continued to  
11 review and rely upon Midway's public filings and press releases and closely monitored  
12 the market price of Midway's shares. When the market price of those shares peaked in  
13 February 2014, Wolfus was again called upon to decide whether to hold his shares and  
14 those of his assignors or whether to sell those shares. Wolfus determined from the  
15 publicly available information from Midway that he and his assignors should continue  
16 to hold their Midway shares. Had Wolfus learned of any of the 2013 Undisclosed  
17 Facts, he would have sold all of his Midway shares and his assignor's Midway shares  
18 in February 2014 when Midway's stock price began to fall from its peak.  
19  
20  
21

22 131. In late August or early September, 2014, Wolfus again needed to make a  
23 decision as to whether to purchase additional Midway shares or refrain from making  
24 any further purchases and instead sell his shares and those of his assignors. Wolfus  
25 again carefully reviewed all public filings and press releases issued by Midway since  
26 December 2013. Had Wolfus learned of any of the 2013 Undisclosed Facts or any of  
27  
28

1 the 2014 Undisclosed Facts at that time, he would have sold all of his Midway shares  
2 and his assignor's Midway shares in October 2014 when Midway's stock price began  
3 to fall from its peak.  
4

5 132. Wolfus' reliance on the statements of fact contained in Midway's public  
6 filings and press releases and the absence of the 2013 Undisclosed Facts and the 2014  
7 Undisclosed Facts in those filings was reasonable.  
8

9 133. The 2013 Control Defendants intentionally defrauded Wolfus by failing  
10 to disclose or causing Midway to disclose the 2013 Undisclosed Facts.  
11

12 134. The 2014 Control Defendants intentionally defrauded Wolfus by failing  
13 to disclose or causing Midway to disclose the 2014 Undisclosed Facts.  
14

15 135. Wolfus was ignorant of the 2013 Undisclosed Facts in January 2014, had  
16 no ability to learn the 2013 Undisclosed Facts prior to January 2014, and relied upon  
17 the absence of any disclosure of the 2013 Undisclosed Facts in exercising his stock  
18 options in January 2014 and in not selling all of his and his assignors' shares of  
19 Midway common stock prior to March, 2014.  
20

21 136. Wolfus was ignorant of the 2013 Undisclosed Facts and the 2014  
22 Undisclosed Facts in September 2014, had no ability to learn any of those facts prior  
23 to September 2014, and relied upon the absence of any of any disclosure of those facts  
24 in exercising his stock options in September 2014 and in not selling all of his and his  
25 assignors' shares of Midway common stock prior to November, 2014.  
26  
27  
28

1 137. Wolfus first learned of the 2013 Undisclosed Facts and the 2014  
2 Undisclosed Facts after June 2015.

3  
4 138. Wolfus has been damaged in an amount to be proven at trial, but no event  
5 less than \$3,000,000. Wolfus is entitled to interest at 10% per annum.

6  
7 **FIFTH CAUSE OF ACTION**  
8  
9 **(NEGLIGENT MISREPRESENTATION**  
10 **AGAINST THE 2013 AND 2014 CONTROL DEFENDANTS)**

11 139. Wolfus realleges the allegations contained in Paragraphs 1 through 98,  
12 102, 103, 105 through 107, 111, 109, 129 through 132 and 135 through 137, as though  
13 fully set forth herein.

14 140. This is a claim for California common law and statutory negligent  
15 misrepresentation committed both by Midway and Defendants, and each of them, for  
16 inducing Wolfus to purchase shares in January and September 2014 and inducing  
17 Wolfus and Wolfus' assignors to hold and not sell their shares in February 2014. This  
18 claim is brought pursuant to the holding in *Small v. Fritz Companies, Inc.*, 30 Cal.4th  
19 167 (2003). This is a cause of action which belongs solely to Wolfus and Wolfus'  
20 assignors who are entitled to keep all recoveries thereon. While Midway also made  
21 negligent misrepresentations and omissions to Wolfus and Wolfus' assignors, Midway  
22 has not been joined as a culpable defendant because of the bankruptcy stay precluding  
23 Wolfus from doing so. California law, as set forth in *Small*, provides that Wolfus is  
24 entitled to recover all damages proximately caused by the negligent misrepresentation  
25  
26  
27  
28

1 which is the market value of the stock then owned by Wolfus and Wolfus' assignors in  
2 February 2014 and the consideration paid by Wolfus for the shares purchased on  
3  
4 September 19, 2014, together with interest thereon at 10% per annum.

5 141. The 2013 Control Defendants negligently failed to disclose or cause  
6 Midway to disclose the 2013 Undisclosed Facts to Wolfus prior to his exercise of  
7  
8 stock options in January 2014.

9 142. The 2014 Control Defendants negligently failed to disclose or cause  
10 Midway to disclose the 2014 Undisclosed Facts to Wolfus prior to his exercise of  
11  
12 stock options in September 2014.

13 143. Because of their status, the 2013 Control Defendants and the 2014  
14 Control Defendants owed Wolfus a duty of full disclosure of all relevant facts related  
15  
16 to the Pan project prior to causing or allowing Midway to sell common stock to  
17 Wolfus.

18 144. Wolfus was ignorant of the 2013 Undisclosed Facts in January 2014, had  
19  
20 no ability to learn the 2013 Undisclosed Facts prior to January 2014, and relied upon  
21 the absence of any disclosure of the 2013 Undisclosed Facts in exercising his stock  
22 options in January 2014 and in not selling all of his and his assignors' shares of  
23  
24 Midway common stock prior to March, 2014.

25 145. Wolfus was ignorant of the 2013 Undisclosed Facts and the 2014  
26 Undisclosed Facts in September 2014, had no ability to learn any of those facts prior  
27  
28 to September 2014, and relied upon the absence of any of any disclosure of those facts



1 in exercising his stock options in September 2014 and in not selling all of his and his  
2 assignors' shares of Midway common stock prior to November, 2014.

3  
4 146. Wolfus first learned of the 2013 Undisclosed Facts and the 2014  
5 Undisclosed Facts after June 2015.

6 147. Wolfus has been damaged in an amount to be proven at trial, but no event  
7 less than \$3,000,000. Wolfus is entitled to interest at 10% per annum.  
8

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Wolfus prays judgment against Defendants, as follows:

- 11  
12 1. For damages in excess of \$10,000.00, according to proof;  
13 2. For exemplary or punitive damages, according to proof;  
14 3. For interest thereon at 10% per annum;  
15 4. For attorneys' fees;  
16 5. For costs of suit; and  
17 6. For such other and further relief as the Court deems just and proper.  
18

19 Dated this 5<sup>th</sup> day of February, 2018.  
20

21 */s/ James R. Christensen*

22 James R. Christensen Esq.  
23 Nevada Bar No. 3861  
24 James R. Christensen PC  
25 601 S. 6<sup>th</sup> Street  
26 Las Vegas NV 89101  
27 (702) 272-0406  
28 (702) 272-0415 fax  
jim@jchristensenlaw.com  
Attorney for Plaintiff

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**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rule of Civil Procedure 5(b), I certify service of the foregoing  
SECOND AMENDED COMPLAINT was made this date via Odyssey to all parties  
currently shown on the e-service list of recipients.

DATED this 5<sup>th</sup> day of February, 2018.

/s/ Dawn Christensen  
an employee of JAMES R. CHRISTENSEN  
Attorney for Plaintiff

# EXHIBIT 1

**NI 43-101 TECHNICAL REPORT**  
**Feasibility Study**  
**for the**  
**PAN GOLD PROJECT**  
**White Pine County, Nevada**

**PREPARED FOR MIDWAY GOLD CORP.**



**Effective date: November 15, 2011**

**Signature date: December 19, 2011**

**Prepared by**  
**William J. Crawl, R.G. QP MMSA**  
**Donald E. Hulse, P.E.**  
**Terre A. Lane, QP MMSA**  
**Donald J. Baker, PhD QP MMSA**  
**Jennifer J. Brown, P.G. Registered Member SME**



## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
<b>1 SUMMARY</b>	<b>1</b>
1.1 INTRODUCTION	1
1.2 PROPERTY DESCRIPTION AND OWNERSHIP	1
1.3 GEOLOGY AND MINERALIZATION	2
1.4 CONCEPT AND STATUS OF EXPLORATION	2
1.5 MINERAL RESOURCE ESTIMATE	2
1.5.1 North Pan	3
1.5.2 Central and South Pan	3
1.6 MINERAL RESERVE ESTIMATE	6
1.6.1 Whittle Optimization	6
1.6.2 Calculation Parameters	6
1.6.3 Cutoff Grade Equations	7
1.6.4 Mineral Reserve Estimate	7
1.7 CONCLUSIONS AND RECOMMENDATIONS	9
<b>2 INTRODUCTION</b>	<b>10</b>
2.1 PURPOSE	10
2.2 QUALIFIED PERSONS	10
2.3 SITE VISIT OF QUALIFIED PERSON	10
2.4 SOURCES OF INFORMATION	11
2.5 UNITS OF MEASURE	11
<b>3 RELIANCE ON OTHER EXPERTS</b>	<b>12</b>
<b>4 PROPERTY DESCRIPTION AND LOCATION</b>	<b>13</b>
4.1 LOCATION	13
4.2 MINERAL TENURE, AGREEMENTS, AND EXPLORATION PERMITS	14
4.2.1 Mineral Rights	14
4.2.1.1 Newark Valley Mining Agreement	15
4.2.1.2 Additional Claims	16
4.3 ENVIRONMENTAL LIABILITIES	16
4.4 EXPLORATION PERMITS AND JURISDICTIONS	17
<b>5 ACCESSIBILITY, CLIMATE, LOCAL RESOURCES, INFRASTRUCTURE, AND PHYSIOGRAPHY</b>	<b>19</b>
5.1 ACCESSIBILITY, INFRASTRUCTURE, AND LOCAL RESOURCES	19
5.2 TOPOGRAPHY, ELEVATION, VEGETATION, AND CLIMATE	19
<b>6 HISTORY</b>	<b>21</b>
6.1 EXPLORATION HISTORY	21
6.2 HISTORICAL RESOURCE AND RESERVE ESTIMATES	22
<b>7 GEOLOGICAL SETTING AND MINERALIZATION</b>	<b>23</b>
7.1 REGIONAL GEOLOGY	23
7.2 PROPERTY GEOLOGY	26

7.2.1	<i>Lithological Units</i> .....	26
7.2.1.1	Simonson Dolomite (Ds) - Devonian.....	26
7.2.1.2	Devils Gate Limestone (Dd) - Late Devonian.....	26
7.2.1.3	Pilot Shale (MDp) - Late Devonian to Early Mississippian.....	26
7.2.1.4	Joana Limestone (Mj) - Mississippian.....	26
7.2.1.5	Chainman Shale (Mc) - Mississippian.....	27
7.2.1.6	Diamond Peak Formation (Md) - Mississippian.....	27
7.2.1.7	Ely Limestone (Pe) - Pennsylvanian.....	27
7.2.1.8	Rib Hill Siltstone - Permian.....	27
7.2.1.9	Kaibab Limestone - Permian.....	27
7.2.1.10	Intrusives - Cretaceous.....	27
7.2.1.11	Volcanic Units (Tv) - Tertiary.....	28
7.2.2	<i>Structural Geology</i> .....	28
7.3	<b>MINERALIZATION</b> .....	28
7.3.1	<i>Alteration</i> .....	29
7.3.2	<i>Geometry of Mineralization</i> .....	30
8	<b>DEPOSIT TYPES</b> .....	33
9	<b>EXPLORATION</b> .....	34
9.1	PREVIOUS OPERATORS EXPLORATION WORK.....	34
9.2	MIDWAY EXPLORATION WORK.....	34
9.2.1	<i>Surface Geochemistry</i> .....	34
9.2.2	<i>Rock Samples</i> .....	34
9.2.3	<i>Geologic Mapping</i> .....	35
9.2.4	<i>Geophysical Surveys</i> .....	35
10	<b>DRILLING</b> .....	36
10.1	INTRODUCTION.....	36
10.2	DRILLING BY MIDWAY GOLD CORP. ....	36
10.2.1	<i>Drilling Procedures and Conditions</i> .....	39
10.2.2	<i>Drill hole Collar Surveys</i> .....	39
10.2.3	<i>Down hole Surveys</i> .....	39
10.2.4	<i>Extent of Drilling</i> .....	40
10.2.5	<i>MIDWAY Data Compilation and Grid Conversion</i> .....	40
10.3	SAMPLING METHOD AND APPROACH.....	40
11	<b>SAMPLE PREPARATION, ANALYSES, AND SECURITY</b> .....	42
11.1	SAMPLE PREPARATION AND ANALYSIS PROCEDURES.....	42
12	<b>DATA VERIFICATION</b> .....	43
12.1	CHECK ASSAYS.....	43
12.2	MIDWAY GOLD CORP. QA/QC PROGRAMS.....	45
12.3	TWIN HOLE STUDY.....	46
13	<b>MINERAL PROCESSING AND METALLURGICAL TESTING</b> .....	49
13.1	ORE SAMPLING AND TEST WORK.....	49
13.2	ONGOING METALLURGICAL TEST WORK.....	49
13.2.1	<i>Head Assays</i> .....	50
13.2.2	<i>XRF Analyses</i> .....	51

13.2.3	XRD Analysis .....	52
13.2.4	ICP Analysis .....	52
13.2.5	Crushability Work and Abrasion Index .....	55
13.2.6	Static Bucket Leach Tests for Surface Samples .....	56
13.2.7	Bottle Roll Leach Tests .....	57
13.2.8	Column Leach Tests .....	60
13.2.8.1	Assay-by-Size Fraction for Gold .....	60
13.2.8.2	Test Results .....	62
13.2.8.3	Percent Slump .....	64
13.2.8.4	Drain Down and Maximum Percolation Rate .....	64
13.2.8.5	Tailing Analysis .....	65
13.2.8.6	Pregnant Solution Analysis .....	65
13.2.9	Coarse Ore Bottle Roll Leach Tests on North Pan Samples .....	68
13.2.10	Agglomeration Tests .....	68
13.2.11	Carbon Loading Tests .....	69
13.2.12	Metallurgical Testing Conclusions .....	70
14	MINERAL RESOURCE ESTIMATES .....	71
14.1	DATA USED FOR THE GOLD GRADE ESTIMATION .....	71
14.2	DENSITY .....	71
14.3	METHODOLOGY .....	72
14.4	ESTIMATION DOMAINS .....	73
14.4.1	Creation of Domains .....	73
14.4.1.1	North Pan .....	75
14.4.1.2	Central Pan .....	75
14.4.1.3	South Pan .....	75
14.4.2	Grade Shell Estimation .....	77
14.4.2.1	North Pan .....	77
14.4.2.2	Central and South Pan .....	77
14.5	COMPOSITING .....	79
14.6	CAPPING OF ASSAYS .....	79
14.7	VARIOGRAPHY .....	80
14.8	ESTIMATION METHODOLOGY .....	82
14.8.1	North Pan .....	82
14.8.2	Central and South Pan .....	82
14.9	ESTIMATE VALIDATION .....	84
14.10	MINERAL RESOURCE CLASSIFICATION .....	86
14.11	MINERAL RESOURCE TABULATION .....	86
15	MINERAL RESERVE ESTIMATES .....	89
15.1.1	Whittle Pit Optimization .....	89
15.1.2	Calculation Parameters .....	89
15.1.2.1	Cutoff Grade Equations .....	89
15.1.3	Mineral Reserve Estimate .....	90
16	MINING METHODS .....	93
16.1	OPEN PIT MINE PLAN .....	93
16.1.1	Pit Design .....	95
16.1.1.1	Geotechnical Pit Slope Evaluation .....	98

16.1.2	Waste Dumps.....	100
16.1.3	Annual Mine Plans.....	100
16.1.4	Geotechnical Design- Heap Leach Pad, Ponds, Stormwater Diversions.....	109
16.1.5	Site Scale Hydrology.....	109
16.1.5.1	Deep Bedrock Aquifer.....	111
16.1.5.2	Water Quality.....	113
16.1.5.3	Alluvial Aquifer.....	113
16.1.6	Mining Equipment.....	115
16.1.7	Support Equipment.....	115
16.2	PREPRODUCTION DEVELOPMENT.....	116
16.3	PRODUCTION SCHEDULE.....	116
16.3.1	Pit Design Schedule Sequence.....	117
16.3.2	Production Schedule Parameters.....	118
16.3.3	Drill and Blast Parameters.....	119
16.3.4	Load and Haul Parameters.....	120
17	RECOVERY METHODS.....	122
17.1.1	Process Description.....	122
17.1.2	Production Rate and Products.....	122
17.1.3	Primary Crushing.....	124
17.1.4	Secondary Crushing.....	126
17.1.5	Agglomeration.....	128
17.1.6	Conveying and Stacking.....	130
17.1.7	Heap Leach.....	132
17.1.8	ADR Gold Recovery Plant.....	132
18	PROJECT INFRASTRUCTURE.....	135
18.1	FACILITIES.....	135
18.1.1	Office Building.....	135
18.1.2	Warehouse and Laboratory.....	135
18.1.3	Truck Shop & Maintenance.....	135
18.1.4	Guard House.....	135
18.1.5	Process Building.....	135
18.2	ROADS.....	140
18.3	SECURITY.....	140
18.4	SEPTIC SYSTEMS.....	140
18.5	WATER.....	140
18.6	POWER.....	141
18.7	FUEL DEPOT.....	143
18.8	COMMUNICATIONS.....	143
19	MARKET STUDIES AND CONTRACTS.....	144
20	ENVIRONMENTAL STUDIES, PERMITTING AND SOCIAL OR COMMUNITY IMPACT.....	145
20.1	PERMITS REQUIRED.....	145
21	CAPITAL AND OPERATING COSTS.....	148
21.1	CAPITAL COST ESTIMATE.....	148
21.1.1	Basis.....	148
21.1.2	Mine Development.....	148



21.1.3	Mine Equipment .....	149
21.1.4	Mine Buildings .....	149
21.1.5	Facilities and Infrastructure .....	150
21.1.6	Primary Crushing and Coarse Ore Storage .....	152
21.1.7	Secondary Crushing, Agglomeration and Stacking .....	153
21.1.8	Leaching .....	155
21.1.9	Process Ponds .....	155
21.1.10	Storm Water Diversions .....	156
21.1.11	Gold Recovery .....	156
21.1.12	Owner's Costs .....	158
21.1.13	EPCM .....	159
21.1.14	Working Capital .....	159
21.1.15	Sustaining Capital .....	160
21.1.16	Contingency .....	161
21.2	OPERATING COST ESTIMATE .....	162
21.2.1	Project Cost and Basis .....	162
21.2.2	Project Manpower .....	164
21.2.3	Mine Operating Costs .....	167
21.2.4	Mine Equipment Costs .....	168
21.2.5	Mine Operating Cost Statistics .....	168
21.2.6	Plant Operating Costs .....	169
21.2.7	Plant Equipment Costs .....	170
21.2.8	Plant Operating Cost Statistics .....	171
21.2.9	General and Administration Costs .....	171
21.2.10	General and Administration Cost Statistics .....	172
21.2.11	Insurance .....	172
21.2.12	Net Proceeds of Mines/Property Tax .....	172
21.2.13	Contingency .....	173
21.2.14	Income Tax .....	173
22	ECONOMIC ANALYSIS .....	174
22.1	FINANCIAL ANALYSIS .....	174
22.2	COMMODITY PRICE(S) .....	174
22.3	ROYALTIES AND TAXES .....	174
22.4	CASH FLOW ANALYSIS .....	174
22.5	ECONOMIC PROJECTION .....	175
22.6	SENSITIVITY ANALYSIS .....	175
22.6.1	Price .....	175
22.6.2	Operating Cost, Capital Cost and Gold Grade .....	176
23	ADJACENT PROPERTIES .....	178
24	OTHER RELEVANT DATA AND INFORMATION .....	179
25	INTERPRETATION AND CONCLUSIONS .....	180
26	RECOMMENDATIONS .....	181
27	REFERENCES .....	182

## LIST OF FIGURES

<u>Figure</u>	<u>Page</u>
Figure 4-1 Property Location .....	13
Figure 4-2 Claim Boundary .....	14
Figure 7-1 Regional Geology, Pancake Range Local Geology .....	24
Figure 7-2 Pan Stratigraphy .....	25
Figure 7-3 East-West Section across North Pan, Looking North .....	31
Figure 7-4 East-West Section across South Pan, Looking North .....	32
Figure 10-1 Pan Project MIDWAY Drill Hole Distribution .....	38
Figure 12-1 MIDWAY Rig Duplicates .....	44
Figure 12-2 Grade vs. Depth Comparison 1 .....	47
Figure 12-3 Grade vs. Depth Comparison 2 .....	48
Figure 14-1 Estimation Domains .....	74
Figure 14-2 South and Central Pan Grade Shells at Bench 6600 .....	76
Figure 14-3 A Spherical Variogram for the Major Axis the South Pan Breccia Domain .....	81
Figure 14-4 Block Model Gold Content of Bench Elevation 6600 .....	85
Figure 16-1 General Site Layout .....	94
Figure 16-2 Final Pits, Heap and Waste Dumps .....	97
Figure 16-3 Mine Plan – Year 1 .....	101
Figure 16-4 Mine Plan – Year 2 .....	102
Figure 16-5 Mine Plan – Year 3 .....	103
Figure 16-6 Mine Plan – Year 4 .....	104
Figure 16-7 Mine Plan – Year 5 .....	105
Figure 16-8 Mine Plan – Year 6 .....	106
Figure 16-9 Mine Plan – Year 7 .....	107
Figure 16-10 Mine Plan – Year 8 .....	108
Figure 16-11 Conceptual Cross Section of the Pan Project Proposed Mine Area .....	110
Figure 16-12 Deep Borehole Locations .....	112
Figure 16-13 Existing Wells in Alluvial Aquifer .....	114
Figure 17-1 General Process Flow .....	123
Figure 17-2 Primary Jaw Crusher .....	125
Figure 17-3 Secondary and Tertiary Crushing .....	127
Figure 17-4 Agglomerator .....	129
Figure 17-5 Teletackler .....	131
Figure 17-6 ADR Processing Facility General Arrangement .....	133
Figure 18-1 Office Building .....	136
Figure 18-2 Lab and Warehouse Facility .....	137
Figure 18-3 Truck and Maintenance Shop .....	138
Figure 18-4 Guard House .....	139
Figure 18-5 Powerline Alignment .....	142
Figure 21-1 Contingency Calculation .....	161
Figure 22-1 Gold Price Sensitivity .....	176
Figure 22-2 Economic Sensitivities .....	177

## LIST OF TABLES

<u>Table</u>	<u>Page</u>
Table 1-1 North Pan Mineral Resource .....	4
Table 1-2 Central Pan Mineral Resource .....	4
Table 1-3 South Pan Mineral Resource .....	5
Table 1-4 Total Pan Mineral Resource .....	5
Table 1-5 Pan Project Mineral Reserves Estimate .....	7
Table 4-1 Pan Royalty Schedule .....	15
Table 10-1 Midway Drilling Exploration Summary .....	36
Table 10-2 2011 Drill Hole Summary .....	37
Table 11-1 Drill Data by Analytical Method .....	42
Table 12-1 Descriptive Statistics of MIDWAY Duplicate Rig Samples .....	45
Table 13-1 Lithology of Composite Samples .....	49
Table 13-2 Head Analyses of Composite Samples .....	50
Table 13-3 XRF Analyses .....	51
Table 13-4 XRD Test Results .....	52
Table 13-5 ICP Analyses of Composite Samples .....	53
Table 13-6 Crushability and Abrasion Test Results .....	56
Table 13-7 Static Bucket Leach Test Results .....	57
Table 13-8 Bottle Roll Cyanidation Test Results – Composite Sample, 6-mesh .....	58
Table 13-9 Bottle Roll Cyanidation Test Results – Composite Sample, 200-mesh .....	59
Table 13-10 Assay-by-Size Fraction Data .....	61
Table 13-11 Summary of Column Leach Test Results for North Pan Samples .....	62
Table 13-12 Summary of Column Leach Test Results for South Pan Samples .....	63
Table 13-13 Percolation Test Results .....	64
Table 13-14 Residue Assay-by-Size Data .....	65
Table 13-15 A and B, Pregnant Solution Analyses .....	66
Table 13-16 Bottle Roll Cyanide Leach Test Results .....	68
Table 13-17 Agglomeration Test Results .....	69
Table 14-1 Core Sample Density Test Results .....	72
Table 14-2 Pan Project Raw Assay Summary Statistics Au ≥ 0.001 opt .....	78
Table 14-3 Domain Composite Data .....	79
Table 14-4 Pan Variogram Parameters .....	81
Table 14-5 Pan Estimation Parameters .....	83
Table 14-6 Pan Estimation Parameters .....	83
Table 14-7 Pan Estimation Parameters .....	83
Table 14-8 North Pan Mineral Resource .....	86
Table 14-9 Central Pan Mineral Resource .....	87
Table 14-10 South Pan Mineral Resource .....	87

Table 14-11 Total Pan Mineral Resource .....	88
Table 15-1 Calculated Cutoffs .....	90
Table 15-2 North and Central Pan Mineral Reserves .....	91
Table 15-3 South Pan and Total Pan Project Mineral Reserves .....	92
Table 16-1 Pit Design Criteria .....	95
Table 16-2 Slope Design Recommendations .....	99
Table 16-3 Initial Mine Equipment .....	115
Table 16-4 Additional Mine Equipment .....	115
Table 16-5 Mine Support Equipment .....	116
Table 16-6 Pan Project Mine Development .....	116
Table 16-7 Yearly Production Schedule .....	117
Table 16-8 Leach Pad Construction Materials .....	118
Table 16-9 Production Schedule by Pit Design .....	118
Table 16-10 Mine Schedule Parameters .....	119
Table 16-11 Equipment Availabilities/Utilization .....	119
Table 16-12 Drill and Blast Parameters .....	120
Table 16-13 Load and Haul Parameters .....	121
Table 17-1 Estimated Reagent Consumption .....	130
Table 17-2 ADR Plant Equipment List .....	134
Table 18-1 Maximum Water Usage .....	141
Table 18-2 Pan Project Estimated Electrical Load .....	143
Table 20-1 Major Permits and Authorizations Required for Project Development .....	145
Table 21-1 Pan Project Capital Cost Estimate .....	148
Table 21-2 Pan Project Mine Development .....	149
Table 21-3 Mine Mobile Equipment .....	149
Table 21-4 Mine Buildings .....	150
Table 21-5 Pan Project Infrastructure, Facilities, and Buildings .....	152
Table 21-6 Primary Crushing and Material Handling .....	153
Table 21-7 Secondary Crushing and Stacking .....	154
Table 21-8 Secondary Tertiary Crusher .....	155
Table 21-9 Leach Pad Cost Estimate .....	155
Table 21-10 Process Pond Cost Estimate .....	156
Table 21-11 Storm Water Diversions .....	156
Table 21-12 Gold Recovery Process .....	157
Table 21-13 Plant Mobile Equipment .....	158
Table 21-14 Owner's Costs .....	159
Table 21-15 Working Capital Costs .....	160
Table 21-16 Additional Mine Equipment .....	160
Table 21-17 Mine Sustaining Capital Major Rebuilds .....	161
Table 21-18 Pan Operating Cost Summary by Cost Type .....	162

Table 21-19 Pan Operating Cost Summary by Cost Center .....	163
Table 21-20 Pan Summary Average Yearly Manpower Costs .....	164
Table 21-21 Mine Manpower .....	165
Table 21-22 Processing Department Manpower .....	166
Table 21-23 General and Administration Department Manpower .....	167
Table 21-24 Pan Yearly Mine Operating Costs .....	167
Table 21-25 Yearly Equipment Hourly Cost .....	168
Table 21-26 Mine Operating Cost Statistics .....	169
Table 21-27 Pan Yearly Plant Operating Costs .....	170
Table 21-28 Yearly Plant Equipment and Non-Equipment Costs .....	170
Table 21-29 Yearly Plant Operating Cost Statistics .....	171
Table 21-30 Pan Yearly General and Administration Costs .....	171
Table 21-31 Yearly Plant Operating Cost Statistics .....	172
Table 22-1 Economic Projection .....	175

December 19, 2011

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## **1 SUMMARY**

### **1.1 Introduction**

Gustavson Associates, LLC (Gustavson) was commissioned by Midway Gold Corp. to complete a Feasibility Study for the Pan Gold Project in White Pine County, Nevada, based on the Updated Mineral Resource Estimate dated September 1, 2011. The Feasibility Study is intended to provide a comprehensive technical and economic analysis of the selected development option for the mineral project. This study includes detailed assessments of realistically assumed mining, processing, metallurgical, economic, legal, environmental, social, and other relevant considerations which have successfully demonstrated the economic viability of the project. The purpose of this report is to document the results of the Feasibility Study in compliance with Canadian National Instrument 43-101 Standards of Disclosure for Mineral Projects.

The Pan gold deposit is a sediment-hosted, bulk tonnage Carlin-type gold deposit along the prolific Battle Mountain-Eureka gold trend in east-central Nevada. Midway Gold US Inc. (hereafter referred to as MIDWAY) has drilled, sampled, and mapped the Pan deposit since acquiring the project in 2007. MIDWAY completed 61,875 ft of drilling in 162 holes in 2007 and 2008, and released an updated mineral resource estimate in December 2009. Gustavson performed an independent audit of the 2009 mineral resource estimate as part of a Preliminary Economic Assessment in 2010, and MIDWAY conducted a 14-hole (5774 ft) diamond core drilling program to obtain additional metallurgical and geotechnical data during the latter half of that same year. Gustavson completed a mineral reserve and mine plan as part of the March 2011 Preliminary Feasibility Study, which included an updated geologic model and mineral resource based on data obtained through February 28, 2011. MIDWAY has since completed an additional 33 holes totaling 27,795 ft.

### **1.2 Property Description and Ownership**

The Pan Project is located in White Pine County, Nevada, approximately 22 miles southeast of Eureka and 50 miles west of Ely. The project area consists of 10,373 acres on 550 contiguous, unpatented federal mining claims controlled by MIDWAY. The property is located in the rolling hills of the Pancake Range in the Basin and Range physiographic province. Terrain is gentle to moderate throughout most of the project area, with no major stream drainages. Elevation of the property ranges from 6,400 to 7,500 ft above mean sea level.

At present, no infrastructure or power is in place at the Pan site. A relatively low voltage distribution line crosses the valley floor near a local ranch approximately 5 miles away. A higher voltage transmission line, 69 kV, with capacity suitable for mining and processing operations, is located approximately 14 miles from the project site and six miles north of US 50. Water to support exploration drilling is available from ranch wells approximately 3 miles to the west of the property. Logistical support is available in Eureka, Ely, and Elko, all of which currently

December 19, 2011

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support large open pit mining operations. Mining personnel and resources for operations at Pan are expected to be available from Eureka, White Pine, and Elko Counties.

### **1.3 Geology and Mineralization**

The geology of the Pan property is dominated by Devonian to Permian carbonate and clastic sedimentary rocks cut by the Pan fault, a steeply west dipping fault that trends north-south. The Pan fault juxtaposes gently west dipping sedimentary units on the west side of the fault with steeply northeast dipping sedimentary units on the east side. Post-mineral Tertiary volcanic rocks nonconformably overlie the faulted Devonian-Permian sedimentary units.

Gold mineralization at Pan occurs in a Carlin-style, epithermal, disseminated, sediment-hosted system. The distribution of the mineralization is controlled by structure, particularly with regard to the development of breccias, and by sedimentary bedding and alteration along unit contacts. Gold deposits within the project area generally occur as elongate bodies associated with structures and dissolution/hydrothermal breccia bodies hosted by the Pilot Shale and, to a lesser extent, the Devils Gate Limestone. Gold deposits also occur in a more tabular fashion within altered and mineralized sedimentary horizons.

### **1.4 Concept and Status of Exploration**

MIDWAY's exploration program includes core and reverse circulation drilling, geologic mapping, geochemical sampling, and geophysical surveys at the Pan property. This comprehensive program has helped to define the geologic occurrence of gold mineralization and identify additional exploration targets on the Pan property. The level of exploration in individual target areas varies from rock and soil sampling with anomalous results to drill holes which reveal anomalous to ore-grade gold values, as determined during the February 2011 Preliminary Feasibility Study. Geochemical and geophysical targets merit additional work, primarily drilling, to test anomalous rock and soil geochemical results. Additional drilling is needed in portions of the deposit to expand and better understand existing drill intercepts.

### **1.5 Mineral Resource Estimate**

Gustavson completed an updated mineral resource estimate for the Pan Project in November 2011. As part of that study, Gustavson created a model to estimate the mineral resources at Pan based on data provided by MIDWAY as of September 1, 2011. No new drilling occurred at North Pan and the February 2011 resource model was not modified during the current study. Gold mineralization in Central and South Pan was re-evaluated during the course of this resource update. Drill hole data including collar coordinates, MIDWAY surveys, sample assay intervals, and geologic logs were provided in a secure Microsoft Access database. Surficial geology maps and cross-sections detailing alteration and lithology were also provided in electronic format. The database has been updated to include the additional 33 reverse circulation drill holes completed by MIDWAY in 2011.

December 19, 2011

2



Gustavson modeled and estimated the mineral resource by constructing geologic, alteration, and mineral domains from the MIDWAY cross sections, and by geostatistically analyzing the drill data to define the parameters required to estimate gold grades in the 3-Dimensional (3D) block model. Leapfrog 3D® geological modeling software was used to create 3D stratigraphic, alteration, and mineral domain solids. MicroModel® software was used to estimate gold grades.

MIDWAY defined the structure, stratigraphy, and alteration of the North, Central, and South Pan zones on 1 inch = 50 ft cross-sections spaced 200 feet apart and oriented east to west. Gustavson combined the MIDWAY subsurface interpretations with surface geology to create 3D stratigraphic and alteration models.

A block model was created for the Pan Deposit using blocks that are 20 feet wide, 20 feet long, and 20 feet high. Each of the blocks was assigned attributes of gold grade, mineral resource classification, rock density, tonnage factor, lithology, alteration, and a grade classification. The blocks were then assigned to a domain as appropriate to assist in estimation.

#### 1.5.1 North Pan

All of the domains were estimated in 3 passes and each block was assigned a classification of measured, indicated, or inferred. The resource classification of each block was based on a factor of the average sample distance in an anisotropic direction as established by the second structure range from the variogram model for the domain being estimated. The measured class utilized a ½ ellipsoid variogram search distance. Indicated was set at a full variogram search distance and inferred was set at 2 times the variogram distance. As an additional requirement, Gustavson limited the measured and indicated estimation data to include only the fire assay intervals. Inferred resource was estimated using all available assay data. Ordinary Kriging was used to estimate grade for all domains.

#### 1.5.2 Central and South Pan

All of the domains were estimated by using large search ellipses oriented in the direction of maximum continuity to provide an estimation of the gold grade within every block inside of the grade shells. The resource classification of each block was based on a factor of the closest sample distance in an anisotropic direction as established by the second structure range from the variogram model for the domain being estimated. The measured class utilized a ½ ellipsoid variogram search distance. Indicated resource was set at a full variogram search distance and inferred resource was set at 2 times the variogram distance. Each domain was estimated using a minimum of 5 composites with no more than 4 composites from a single drill hole. A maximum of 12 composites was allowed to better represent the local variability. Ordinary Kriging was used to estimate grade for all domains.



The mineral resource estimate is summarized in Tables 1-1 through 1-4. This mineral resource estimate includes all drill data obtained as of September 1, 2011, and has been independently verified by Gustavson.

**Table 1-1 North Pan Mineral Resource**

<b>North Pan Measured Resource</b>			
<b>Opt</b>	<b>Tons</b>	<b>Au Opt</b>	<b>oz</b>
0.008	13,994,415	0.0168	234,844
0.006	15,592,007	0.0158	245,850
<b>0.004</b>	<b>18,597,319</b>	<b>0.0140</b>	<b>260,404</b>
<b>North Pan Indicated Resource</b>			
0.008	10,565,126	0.0146	154,540
0.006	12,702,959	0.0133	169,135
<b>0.004</b>	<b>17,006,845</b>	<b>0.0112</b>	<b>189,823</b>
<b>North Pan Measured plus Indicated Resource</b>			
0.008	24,559,541	0.0159	389,384
0.006	28,294,966	0.0147	414,985
<b>0.004</b>	<b>35,604,164</b>	<b>0.0126</b>	<b>450,228</b>
<b>North Pan Inferred Resource</b>			
0.008	122,858	0.0112	1,376
0.006	233,476	0.0091	2,129
0.004	511,402	0.0067	3,427

**Table 1-2 Central Pan Mineral Resource**

<b>Central Pan Measured Resource</b>			
<b>Opt</b>	<b>Tons</b>	<b>Au Opt</b>	<b>oz</b>
0.008	2,329,227	0.0146	33,991
0.006	2,837,448	0.0132	37,482
<b>0.004</b>	<b>3,802,537</b>	<b>0.0111</b>	<b>42,192</b>
<b>Central Pan Indicated Resource</b>			
0.008	1,895,266	0.0122	23,216
0.006	2,524,520	0.0109	27,623
<b>0.004</b>	<b>4,053,056</b>	<b>0.0086</b>	<b>34,885</b>
<b>Central Pan Measured plus Indicated Resource</b>			
0.008	4,224,493	0.0135	57,207
0.006	5,361,968	0.0121	65,105
<b>0.004</b>	<b>7,855,593</b>	<b>0.0098</b>	<b>77,077</b>
<b>Central Pan Inferred Resource</b>			
0.008	240,912	0.0103	2,470
0.006	290,465	0.0096	2,802
0.004	722,079	0.0066	4,741

Table 1-3 South Pan Mineral Resource

South Pan Measured Resource			
Opt	Tons	Au Opt	oz
0.008	13,826,998	0.0182	251,350
0.006	15,584,480	0.0169	263,423
<b>0.004</b>	<b>18,297,337</b>	<b>0.0151</b>	<b>276,641</b>
South Pan Indicated Resource			
0.008	17,440,794	0.0158	275,596
0.006	20,764,856	0.0144	298,599
<b>0.004</b>	<b>26,469,130</b>	<b>0.0123</b>	<b>325,863</b>
South Pan Measured plus Indicated Resource			
0.008	31,267,792	0.0169	526,946
0.006	36,349,336	0.0155	562,022
<b>0.004</b>	<b>44,766,467</b>	<b>0.0135</b>	<b>602,504</b>
South Pan Inferred Resource			
0.008	1,588,716	0.0184	29,274
0.006	1,933,540	0.0164	31,651
0.004	3,096,599	0.0120	37,093

Table 1-4 Total Pan Mineral Resource

Pan Total Measured Resource			
Opt	Tons	Au Opt	oz
0.008	30,150,640	0.0173	520,186
0.006	34,013,935	0.0161	546,756
<b>0.004</b>	<b>40,697,193</b>	<b>0.0142</b>	<b>579,238</b>
Pan Total Indicated Resource			
0.008	29,901,186	0.0152	453,351
0.006	35,992,335	0.0138	495,357
<b>0.004</b>	<b>47,529,031</b>	<b>0.0116</b>	<b>550,571</b>
Pan Total Measured plus Indicated Resource			
0.008	60,051,826	0.0162	973,537
0.006	70,006,270	0.0149	1,042,112
<b>0.004</b>	<b>88,226,224</b>	<b>0.0128</b>	<b>1,129,809</b>
Pan Total Inferred Resource			
0.008	1,952,486	0.0170	33,120
0.006	2,457,481	0.0149	36,581
0.004	4,330,080	0.0105	45,261

## 1.6 **Mineral Reserve Estimate**

The February 2011 Prefeasibility Study demonstrated that the Pan Project is economically viable, and this Feasibility Study has strengthened that conclusion. Based on the results of the Feasibility Study, Measured and Indicated Mineral Reserves within the designed pits are considered Proven and Probable Reserves as defined by the Canadian Institute of Mining, Metallurgy, and Petroleum. The final reserves are reported using a 0.008 Au opt cutoff for the North and Central pits, and a 0.006 Au opt cutoff for the South pit. Cutoffs were chosen to maximize the NPV of the project and do not necessarily represent the minimum economic cutoff. Pit designs are based on geologic criteria provided in the April 2011 Pit Slope Evaluation report produced by Golder Associates. Geologic solids created for each lithological unit were used as a guide during the pit design process. The limestone units were designed with a 50° inter-ramp wall angle assuming pre-split blasting in these units; all other lithological units were designed with a 45° inter-ramp wall angle.

### 1.6.1 Whittle Optimization

Gustavson generated a series of optimization shells on the South and North resource blocks, ranging from \$236/oz to \$2360/oz. Forty six shells were generated separately for the North and South resource areas. Heap leach recoveries of 65% and 85%, for North and South Pan, respectively, were used in the optimization runs. The general parameters were based on preliminary estimates of operating cost, and incorporated recommendations from the April 2011 Pit Slope Evaluation report. Mining costs were estimated to be \$1.09/ton of material moved for the pit optimization. Crushing, agglomeration, leaching, general and administration, and gold recovery costs were estimated at \$3.71/ton of ore. Only Measured and Indicated Resources were considered in the evaluation; Inferred resources were treated as waste.

### 1.6.2 Calculation Parameters

The series of pit optimizations were graphed and evaluated to compare cash flows, net present values (NPV's) and internal rates of return (IRR's). The final South pit and the North pit optimizations are based on shells at a cost less than the three year trailing average price of

\$1200/oz in order to achieve a higher NPV and overall lower cash cost per ounce. The option of mining the entire South Pan pit before the North Pan pit was evaluated during the scheduling process. Although the South Pan pit has a 20% higher recovery factor, mining the South Pan in phases results in a higher IRR by delaying the high strip of the Phase 2 South Pit until the end of the mine life. The option of mining the North pit first was also evaluated, but the higher recovery from the South Pan pit (85%, compared to 65% from North Pan) and shorter estimated leach times render the South pit the more favorable option to mine first.

### 1.6.3 Cutoff Grade Equations

The mineral reserve estimate for the Pan Project is based on designed open pits with maximized revenues at a gold price of \$1180 per ounce. Cutoff grades of 0.006 Au opt (0.21 gpt) in the South pit and 0.008 Au opt (0.27 gpt) in the North & Central pits provide the highest NPV for the project.

### 1.6.4 Mineral Reserve Estimate

Using the NI 43-101 Updated Mineral Resource Estimate filed in November 2011, Proven and Probable Reserves of 53,254,000 tons at a grade of 0.016 opt are contained in the mineral resource at Pan. A total of 864,000 oz of gold are contained in the Pan Project mineral reserves. Estimated mineral reserves for the Pan Project are presented in Table 1-5.

**Table 1-5 Pan Project Mineral Reserves Estimate**

<b>North and Central Pan</b> <b>Cutoff Grade:</b> <b>0.008 opt / 0.274 g/tonnes</b>	<b>Tons</b>	<b>Gold</b>	
	<b>(x 1000)</b>	<b>opt</b>	<b>ounces (x 1000)</b>
<b>North Pan</b>			
Proven Reserves	12,625	0.018	223.30
Probable Reserves	10,993	0.015	162.66
Proven & Probable Reserves	23,618	0.016	385.95
Inferred within Designed Pit	351	0.012	4.29
Waste within Designed Pit	27,823		
Total tons within Designed Pit	51,791		
<b>Central Pan</b>			
Proven Reserves	1,799	0.015	27.78
Probable Reserves	1,125	0.013	15.00
Proven & Probable Reserves	2,924	0.015	42.78
Inferred within Designed Pit	75	0.010	0.77
Waste within Designed Pit	5,387		
Total tons within Designed Pit	8,386		
<b>Sub Total - North + Central</b>			
Proven Reserves	14,423	0.017	251.08
Probable Reserves	12,119	0.015	177.66
Proven & Probable Reserves	26,542	0.016	428.74
Inferred within Designed Pit	426	0.012	5.06
Waste within Designed Pit	33,210		
Total tons within Designed Pit	60,177		

Table 1-5 cont.

<b>South Pan - Phases 1 and 2</b> <b>Cutoff Grade:</b> <b>0.006 opt / 0.206 g/tonnes</b>	<b>Tons</b>	<b>Gold</b>	
	<b>(x 1000)</b>	<b>opt</b>	<b>ounces (x 1000)</b>
<b>South Pan - Phase 1</b>			
Proven Reserves	11,856	0.018	215.44
Probable Reserves	7,593	0.016	119.26
Proven & Probable Reserves	19,449	0.017	334.70
Inferred within Designed Pit	56	0.010	0.55
Waste within Designed Pit	31,887		
Total tons within Designed Pit	51,392		
<b>South Pan - Phase 2</b>			
Proven Reserves	1,548	0.014	21.01
Probable Reserves	5,716	0.014	79.80
Proven & Probable Reserves	7,263	0.014	100.81
Inferred within Designed Pit	212	0.016	3.39
Waste within Designed Pit	29,485		
Total tons within Designed Pit	36,961		
<b>Sub Total - Phase 1 + 2</b>			
Proven Reserves	13,404	0.018	236.46
Probable Reserves	13,308	0.015	199.05
Proven & Probable Reserves	26,713	0.016	435.51
Inferred within Designed Pit	269	0.015	3.94
Waste within Designed Pit	61,372		
Total tons within Designed Pit	88,353		
<b>Total Reserves</b>			
	<b>(x 1000)</b>	<b>opt</b>	<b>ounces (x 1000)</b>
Proven Reserves	27,827	0.018	487.51
Probable Reserves	25,427	0.015	376.71
Proven & Probable Reserves	53,254	0.016	864.22
Inferred within Designed Pit	695	0.013	9.0
Waste within Designed Pit	94,582		
Total tons within Designed Pit	148,531		

## 1.7 **Conclusions and Recommendations**

As a result of the work done as part of and resulting from this Feasibility Study, Gustavson concludes:

- The Pan deposit now contains over 1.1 million ounces of gold in Measured and Indicated Mineral Resource categories using a 0.004 opt cutoff.
- There continues to be good potential for the discovery of additional Mineral Resources at Pan.
- There is a proven and probable Mineral Reserve of 53,254,000 tons, containing 864,000 ounces of gold.
- The Pan project is an economic mining project generating approximately \$122 million net present value, and an internal rate of return of 32.4% at a gold price of \$1200.

Based on the results of this Feasibility Study, Gustavson recommends:

- Continuation of drilling to fill-in areas that are promising development areas, specifically between the North and South pits. MIDWAY is planning on \$ 1.5 million in drilling for the next two years.
- Finalization of engineering for infrastructure, buildings, mining, and site facilities. This is currently estimated at \$0.86 million (included in capital costs in the Feasibility Study)
- Support for the EIS and permitting, estimated to be \$ 0.4 million over the next 2 years.
- Construction of the access road which is estimated at \$ 1.7 million.
- Drilling and testing of a water well, estimated at \$0.1 million.
- Purchase of long-lead equipment estimated at approximately \$ 2.0 million.

December 19, 2011

9



## 6 HISTORY

### 6.1 Exploration History

Mr. Lyle Campbell discovered the Pan deposit while prospecting in 1978, when he encountered gold-bearing jasperoid, now referred to as Campbell Jasperoid. Mr. Campbell staked 147 original unpatented mining claims, and transferred ownership of the claims to the LFC Trust in 1986. The LFC Trust was bought out in 2008 and is now owned by NVMC.

Several companies have conducted exploration on the property since 1978. The following paragraphs summarize exploration activities at Pan based on information provided in previously issued technical reports:

- Mr. Campbell leased his claims to Amselco in 1978. The majority of drilling exploration carried out by Amselco took place in North Pan.
- In 1986, Hecla conducted a drilling exploration program in the central portion of the Pan property.
- Echo Bay leased the claims in 1987 and completed an exploration drilling program that resulted in the discovery of gold mineralization at South Pan.
- The Pan property was explored under a joint venture between Alta Gold and Echo Bay from 1988 through 1991. Drilling was conducted in both North and South Pan, in conjunction with geologic mapping, geochemical sampling, and an induced polarization geophysical survey. The Alta Bay joint venture initiated studies in support of mining development, including an archaeological survey, additional metallurgical test work, and preliminary mineral reserve calculations and mine designs.
- Alta Gold retained ownership of the Pan Project after dissolution of the joint venture until 1992. Drilling exploration was reported, but the associated holes have not been validated and are not included in the modern day resource database.
- In 1993, Southwestern Gold Corporation completed drilling exploration on a small section of claims that they held at that time west of North Pan. The associated drill hole collars have been identified in the field, but no other information has been validated and these holes are not included in the modern resource database.
- The Pan Project was dormant from 1993 until 1999, when Latitude leased the property from LFC Trust. Between 1999 and 2001, Latitude explored the property as part of a joint venture with Degerstrom. Geologic mapping and outcrop and soil sampling were completed under the joint venture, as was drilling and metallurgical testing.
- Latitude drilling focused primarily on North and South Pan mineralization, but also resulted in the discovery of mineralization in the modern day Syncline and Black

December 19, 2011

21



Stallion target areas of Central Pan. Latitude terminated the joint venture with Degerstrom in mid-2001, and joint ventured the project to Metallica later that year. From LFC Trust files, it appears that Metallica focused on thermal imagery and lineament study of satellite data over the Pan area. No additional subsurface exploration work was completed. The LFC Trust terminated the lease agreement with Latitude in 2002, citing Latitude's inability to meet financial obligations.

- Castleworth Ventures, Inc. leased the Pan claims in January 2003. The company completed drilling exploration and conducted geologic mapping, sampling, metallurgical test work, and resource estimation. On April 16, 2007, Pan Nevada Gold Corporation (formerly Castleworth Ventures, Inc.) was acquired by MIDWAY.
- Since acquiring the Pan Project in 2007, MIDWAY has completed 209 holes, of which 195 were reverse circulation and 14 diamond core drill holes for a total of 95,394 ft. Drilling efforts have generally focused on expanding known mineralization, but also include confirmation drilling and exploration drilling in several potential target areas on the Pan property. In addition to drilling exploration, MIDWAY has completed geologic mapping, soil and outcrop sampling, and gravity survey.

## 6.2 Historical Resource and Reserve Estimates

Historical resource and reserve estimates are described in detail in the 2005 report produced by Mine Development Associates (MDA). These resource and reserve estimates have not been verified, are not considered reliable, are not relevant to the updated mineral resource presented in this report, and are mentioned here for historical completeness only.

December 19, 2011

22





## 16 MINING METHODS

### 16.1 Open Pit Mine Plan

The Pan gold deposit contains mineralization at or near the surface and spatially distributed in a manner that is ideal for open pit mining methods. Gold grade distribution and the results of preliminary mineral processing testing indicate that ore from the Pan deposit can be processed by conventional heap leaching methods. The method of material transport evaluated for this study is open pit mining using a 21.6-yd<sup>3</sup> front end shovel as the main loading unit with a 16-yd<sup>3</sup> front end loader as a backup loading unit. The ore will be loaded into 150-ton haul trucks and transported to the primary jaw crusher, which will be set up at the mouth of the pit. The primary jaw crusher is a semi-mobile unit mounted on skids that will be moved to the mouth of whichever pit is being mined. The crushed ore material will be conveyed to the secondary crushing site, crushed to P80 ½-inch (North) and P80 1½-inch (South), agglomerated, and conveyed to the heap leach pad. The waste material will be loaded into the 150-ton haul trucks and hauled directly to the waste dump. The truck haul method was chosen over in-pit mobile crushers and mobile conveyors in order to simplify waste dump construction and allow for more flexibility in day to day mining activities.

MIDWAY will own, operate, and maintain all equipment. The general site layout, including pits, waste dumps, the secondary crusher site, infrastructure, ponds, and heap leach pads, is shown on Figure 16-1.

December 19, 2011

93





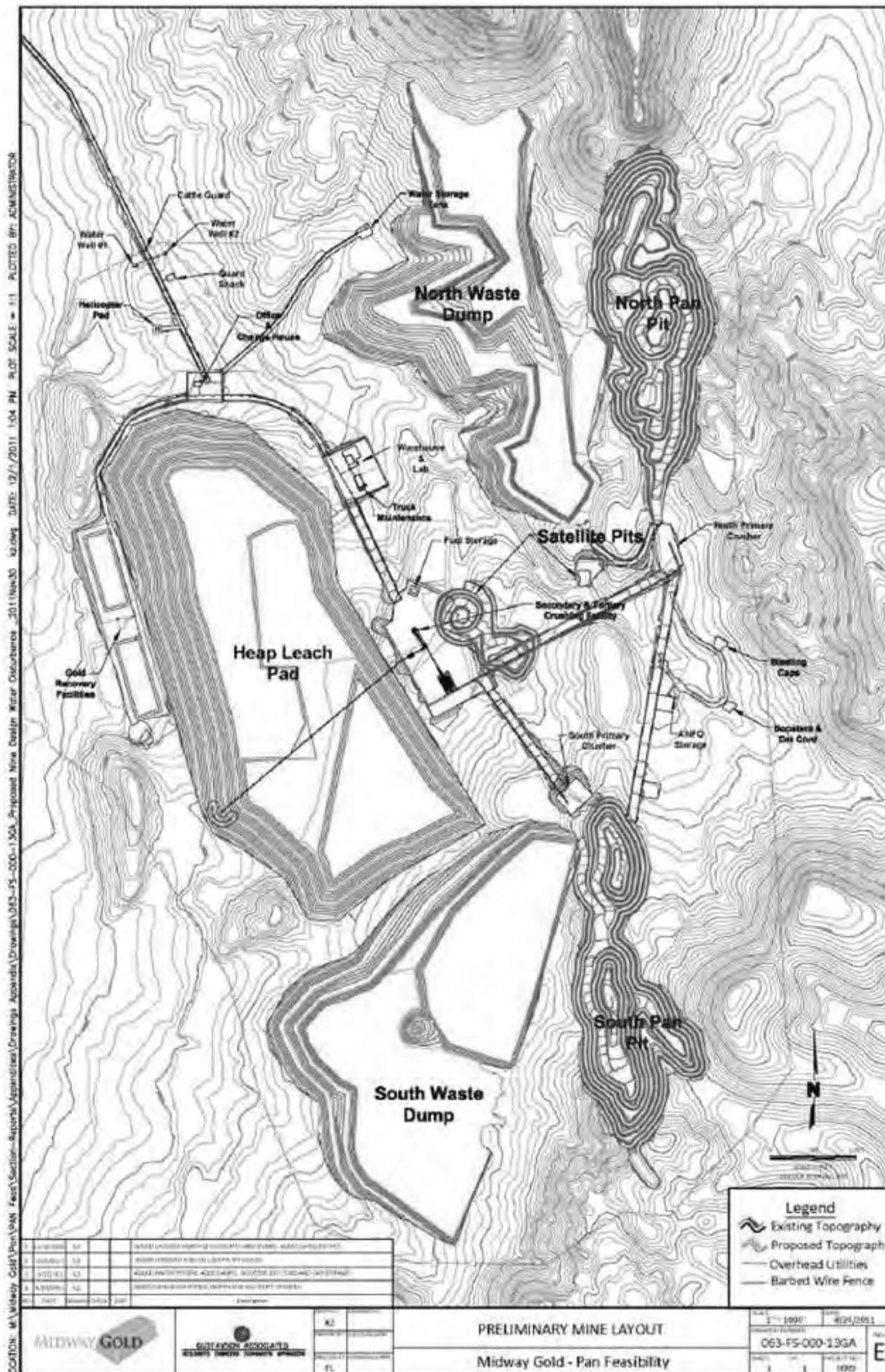


Figure 16-1 General Site Layout



Ore production is planned at a nominal rate of 17,000 tons per day (tpd), equivalent to 6.2 million tons per annum with a 8.8 year mine life. Mining is planned on a 7 day per week schedule, with two 12 hour shifts per day. Peak ore and waste production is estimated at 67,000 tpd. The average life of mine stripping ratio is 1.79:1 waste-to-ore, using a 0.006 Au oz/ton cutoff for the South Pan pit and a 0.008 Au oz/ton cutoff on the North and Central pits. The change in cutoffs from one pit to the next are a result of the metallurgical recovery testing which showed the South pit has an expected average recovery of 85% and the North pit has an expected recovery of 65%. Other cutoff scenarios were evaluated using 0.004, 0.006 and 0.008 Au oz/ton, but the scenario presented here provides the best IRR and NPV at a 5% discount rate.

#### 161.1.1 Pit Design

Whittle-generated pit surfaces, which maximized revenue based on the estimated average of \$1,180 per ounce gold, were used in conjunction with the Pan block model to design the open pits with haul roads and catch benches for North Pan, Central Pan, and South Pan. Pit designs are based in part on geologic criteria provided in the April 2011 Prefeasibility Level Pit Slope Evaluation report produced by Golder Associates. Geologic solids created for each lithological unit were used as a guide during the pit design process. The limestone units were designed with a 50° inter-ramp wall angle assuming pre-split blasting in these units, all other lithological units were designed at a 45° inter-ramp wall angle. Haul roads are designed at a width of 90 ft, which provides a safe truck width (23 feet) to running surface width ratio of 3.9. Maximum grade of the haul roads is 10%, except for the lowermost three to five benches where the grade is increased to 12% and the ramp width is narrowed to 50 feet to minimize excessive waste stripping. The pit design criteria are presented in Table 16-1.

**Table 16-1 Pit Design Criteria**

<b>Mine Design Criteria</b>		
<b>Pit Design Criteria</b>	<b>Limestone Units</b>	<b>All Other Rock Units</b>
Inter-Ramp Angles	50 Degrees	45 Degrees
Face Angles	70 Degrees	63 Degrees
Catch Bench Berm	30 ft.	30 ft.
Catch Bench Vertical Spacing	60 ft.	60 ft.
Minimum Turning Radius	90 ft.	90 ft.
Road Widths	90 ft.	90 ft.
Road Grade	10%	10%
Road Widths Pit Bottom	50 ft.	50 ft.
Road Grade Pit Bottom	12%	12%

Design of the North Pan pit has not changed considerably from the design considered during the Prefeasibility Study, but the size of the final South Pan pit has approximately doubled. The increase in size of the South Pan pit is based on the positive results of recent drilling in the Wendy target area. The Central Pan pits, which were not considered during the Prefeasibility Study, are located very close to the leach pad and will also provide suitable over-liner material for pad construction. The Central Pan pits will be mined first and then backfilled with waste from the South Pan pit. Design of the South Pan pit includes two phases of construction in order to account for a strip ratio that is considerably higher than the other pit designs. An intermediate pit was also designed near the south end of the North Pan pit to provide a borrow source for over-liner material. The final pit designs are shown in Figure 16-2

Study, are located very close to the leach pad and will also provide suitable over-liner material for pad construction. The Central Pan pits will be mined first and then backfilled with waste from the South Pan pit. Design of the South Pan pit includes two phases of construction in order to account for a strip ratio that is considerably higher than the other pit designs. An intermediate pit was also designed near the south end of the North Pan pit to provide a borrow source for over-liner material. The final pit designs are shown in Figure 16-2

December 19, 2011

96





## 17 RECOVERY METHODS

### 17.1.1 Process Description

Material from the North, Central, and South Pan pits will be processed using conventional heap leaching methods. Ore will be mined and processed first from the Central pit, then the South pit (phase I), from the North pit, and finally from the South pit (phase II).

Ore will be crushed by the primary edge-of-pit mobile jaw crusher and secondary and tertiary cone crushers prior to leaching. Screening at secondary and tertiary crushing stations will control the crush size. The crushed ore will be agglomerated and conveyed to the heap leach pad. Crush size, leach kinetics, and recoveries are based on current metallurgical testing.

### 17.1.2 Production Rate and Products

The Pan mine and material handling system is designed for a throughput of 17,000 tons of ore per day, or 6.2 million tons of ore per year. The ADR plant is designed at 5,000 gpm, and is expected to produce approximately 80,000 ounces of gold per year. The entire mine and process flow is depicted in Figure 17-1.

December 19, 2011

122





Typical for most Carlin type ores, the reagent consumption is relatively low (Table 17-1). Based on the metallurgical test work, RDI recommended using 0.4 to 0.6 lbs sodium cyanide per ton. 0.50 lbs per ton sodium cyanide consumption at a P80 ½-inch crush size has been used in the economic model.

**Table 17-1 Estimated Reagent Consumption**

LIME	1.8 Pounds per ton
CEMENT	5 pounds per ton
CYANIDE 1 ½" Crush	0.27 pounds per ton
CYANIDE ½" Crush	0.50 pounds per ton

Tests were completed on both the South and North Pan materials to support these estimates.

Agglomeration equipment includes:

- Cement Storage Silo package
- Lime Storage Silo package
- Agglomerator Unit

#### 1.7.1.6 Conveying and Stacking

Agglomerated ore is delivered to the short overland conveyor, which feeds a series of grasshopper conveyors and ultimately the telestacker conveyor (Figure 17-5). The telestacker conveyor distributes the crushed and agglomerated ore evenly across the leach pad, in 30 foot lifts.

- Agglomerator Discharge Conveyor 400-CV1
- Flat Grade Jump Conveyor 400-JC1-29
- Feed Conveyor 400-CV3
- IC Conveyor 400-CV4
- Telestacker Conveyor

## 21 CAPITAL AND OPERATING COSTS

### 21.1 Capital Cost Estimate

The capital cost estimate for the Pan Project includes all quoted equipment costs, quoted installation costs, and quantity takeoffs for major components. A breakdown of the total estimated initial capital cost is presented in Table 21-1.

**Table 21-1 Pan Project Capital Cost Estimate**

<b>Feasibility Capital Costs</b>	<b>Estimated Cost</b>
Mine Mobile Equipment	\$ 25,614,600
Mine Development	\$ 2,000,000
Mine Buildings	\$ 1,903,800
Primary Crushing - Edge of Pit to Stockpile	\$ 5,604,700
Ore Circuit - From Stockpile to Leach Pad	\$ 10,762,800
Gold Recovery Plant	\$ 7,290,500
Plant Mobile Equipment	\$ 281,600
Leach Pad Installation	\$ 6,737,000
Process Ponds	\$ 3,623,000
Storm Water Diversion	\$ 1,497,200
Infrastructure	\$ 13,603,500
Owner's Costs	\$ 4,768,800
Reclamation Bond, Facilities	\$ 500,000
<b>Subtotal</b>	<b>\$ 84,187,500</b>
Contingency	\$ 6,765,800
Working Capital	\$ 8,214,400
<b>Total Initial Capital</b>	<b>\$ 99,167,700</b>

#### 21.1.1 Basis

The capital cost estimates were generated primarily from quotes from equipment suppliers and contractors. Excluding contingency and working capital, 73% of the estimated costs are from quotes. In-house take-offs and estimated costs from previous construction projects were used for the remaining items. All individual costs include the appropriate sales tax component.

#### 21.1.2 Mine Development

Gustavson has included an allowance for pioneering, clearing, grubbing, and initial haul road construction in the capital cost estimate. The estimated quantities and costs associated with mine development tasks are presented in Table 21-2.

applied to the appropriate capital asset and income categories to calculate the regular income tax burden. Alternative minimum tax provisions were applied to those years in which the regular tax was below the minimum allowable level.

Projected economic outcomes were prepared on an annual basis, including the internal rate of return and utilizing a 5% discount factor for net present value calculations. An analysis of the years required for payback of initial capital and the payback multiple (the positive cash flows as a multiple of the total capital investment) were also generated.

## 22.5 Economic Projection

The project is projected to have a total lifespan of 9.75 years: one year of construction and pre-production, 8.25 years of full operations and one-half year of residual gold production. Approximately 864,000 ounces of gold are projected to be mined and 649,000 ounces of gold recovered and produced for sale. An initial capital investment of \$99.168 million, including contingency and working capital, is expected to be required with a total of \$154.904 million over the life-of-mine, including reclamation, contingency and all sustaining capital. Following the Gold Institute (GI) guidelines, cash operating cost is projected to be \$537 per ounce of gold. The GI total cash cost (including royalties) would be \$585 per ounce and the GI total production cost is expected to be \$824 per ounce. The economic projection for the Pan Project is presented in Table 22-1.

**Table 22-1 Economic Projection**

Gold Price	Net Present Value @ 5%	Internal Rate of Return	Payback Period	Payback Multiple
\$855	\$4,100,000	6.0%	7.22	1.30
\$1,200	\$122,600,000	32.4%	2.59	2.88
\$1,550	\$235,100,000	55.7%	1.70	4.53
\$1,900	\$344,400,000	79.1%	1.20	6.30

## 22.6 Sensitivity Analysis

### 22.6.1 Price

Consistent with almost all gold projects, the Pan Project is very responsive to changes in the price of gold. For this study, an increase in the average gold price to \$1550 per ounce increases the NPV-5 by 92% to approximately \$235 million. An increase to \$1900/oz in the gold price results in an NPV-5 of \$344 million, an increase of 181% (Figure 22-1).

## EXHIBIT 2

8-K 1 midway8k\_11262012.htm

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

**Date of Report: November 21, 2012**  
(Date of earliest event reported)

**MIDWAY GOLD CORP.**  
(Exact Name of Registrant as Specified in Charter)

**British Columbia, Canada**  
(State or Other Jurisdiction of Incorporation)

**001-33894**  
(Commission File Number)

**98-0459178**  
(IRS Employer Identification No.)

**8310 South Valley Highway, Suite 280**  
**Englewood, Colorado**  
(Address of principal executive offices)

**80112**  
(Zip Code)

Registrant's telephone number, including area code: **(720) 979-0900**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

### **Item 1.01 Entry into Material Definitive Agreements**

On November 21, 2012, Midway Gold Corp. (the “**Registrant**” or “**Midway**”) announced a US\$70,000,000 private placement of Series A Preferred Shares (the “**Series A Preferred Shares**”) to institutional accredited investors, including INV-MID, LLC (as “**Lead Investor**”), EREF-MID II, LLC, and HCP-MID, LLC (collectively, with the Lead Investor, the “**Investors**”). The Private Placement is expected to close on or before December 13, 2012.

In connection with the private placement, Midway entered into Share Purchase Agreements, a Registration Rights Agreement and a Side Letter with the Investors, each effective November 21, 2012, and agreed to the terms of the Series A Preferred Amendment to Midway’s Articles of Incorporation. Hale Capital Partners, L.P. participated as part of the Investors in the private placement. Nathaniel Klein, a current director, is Vice President of Hale Capital Partners, L.P. and abstained from approving the private placement and the transactions contemplated thereunder.

#### **Share Purchase Agreement**

Under the terms of the Share Purchase Agreements, Midway agreed to sell and the Investors agreed to purchase 37,837,838 Series A Preferred Shares at a price of US\$1.85 per Series A Preferred Share, for aggregate purchase consideration of US\$70,000,000. The proceeds will be used for working capital and general corporate purposes.

The Share Purchase Agreements contain customary representations and warranties, including Midway representations related to availability of securities law exemptions, due authorization, financial statements, capitalization, property (title, permits, environmental), employee, insurance, tax compliance and regulatory matters and Investor representations related to accredited investor status, authorization and securities law matters. The Share Purchase Agreements contain customary closing conditions, including closing opinion delivery, execution of a Registration Rights Agreement, filing of amendments to Midway’s Articles of Incorporation to authorize the issuance of Series A Preferred Shares, no material changes, no litigation, delivery of consents and certificates and other customary closing conditions, indemnification undertakings, Investors’ expense reimbursement and other obligations. The Share Purchase Agreements are governed by New York law.

Neither the Series A Preferred Shares nor the Common Shares issuable upon conversion or paid as dividends have been registered under the Securities Act of 1933, as amended (the “**U.S. Securities Act**”), or any state securities laws. The Series A Preferred Shares will be issued only to institutional “accredited investors: (as defined in Rule 501(a) of Regulation D) pursuant to exemptions from such registration requirements and will be deemed “restricted securities” as defined in Rule 144(a)(3) of the U.S. Securities Act.

No underwriting discounts, fees or commissions are payable in connection with the private placement.

The Private Placement is expected to close on or before December 13, 2012.

#### **Series A Rights**

In connection with the private placement, Midway will amend its Articles of Incorporation to authorize Series A Preferred Shares in the capital of Midway with certain terms, conditions, and rights (the “**Series A Rights**”). Material provisions of the Series A Rights are as follows:

**Voting:** Series A Preferred Shares will have the following voting rights:

**Voting at Shareholder Meetings:** Series A Preferred Shares will be entitled to vote, on an as converted basis, at all meetings of Midway’s shareholders, except as otherwise required by law or in the amended Articles of Incorporation.

- (a) **Approval of Certain Corporate Actions:** The consent or affirmative vote of the Preferred Super Majority (initially the Lead Investor until the Lead Investor owns less than 3,783,784 Series A Preferred Shares, then the holders of a majority of the Series A Preferred Shares) is required for Midway to effect any of the following:

- (b) create a new class or series of shares equal or superior to the shares of such class;
- (c) redeem or repurchase any shares of the Company except for purchases at cost upon termination of employment;
- (d) a voluntary or involuntary liquidation, dissolution or winding-up of the affairs of the Company;
- (e) change the special rights or restrictions attached to the Series A Preferred Shares;
- (f) amend or repeal of any provision of the Company's Notice of Articles or Articles in a manner adverse to the holders of Series A Preferred Shares; or
- (g) issue any additional Common Shares or common share equivalents for less than the Conversion Price (initially US\$1.85) applicable to the Series A Preferred Shares; except for any of the following:
  - (i) Common Shares pursuant to a Stock Split;
  - (ii) securities issued upon exercise, conversion or exchange of existing and outstanding Securities Equivalents on the date hereof;
  - (iii) options to acquire Common Shares (and Common Shares issuable upon exercise of such options) issued in accordance with any employee incentive stock option plan, or any amendment to a stock option plan, of the Company approved by the shareholders of the Company for the Company's management, directors and employees where the exercise price or conversion price of such Options is below the Conversion Price, but is not less than the Closing Price of the Common Shares at the time of such grant or issuance; provided, further, that the aggregate of such grants, issuances or sales per calendar year shall not exceed five percent (5%) of the issued and outstanding shares of Common Shares as of December 31 of such calendar year;
  - (iv) Common Shares issued for the purpose of redeeming in full the Series A Preferred Shares in cash; or
  - (v) up to a maximum of 756,757 Common Shares to be used exclusively for real property acquisitions, including by way of a joint venture.

**Director Appointment:** Upon approval of a majority of the holders of Common Shares of Midway who cast votes at a meeting of Common Shareholders, the Preferred Governance Majority (initially the Lead Investor until the Lead Investor owns less than 7,567,568 Series A Preferred Shares, then the holders of a majority of the Series A Preferred Shares) has the right to nominate one (1) director nominee for election to the Board to be elected by the Preferred Holders (the “**Preferred Director**”), voting as a separate series at each annual or special meeting of shareholders of the Company or action by written consent of shareholders at which directors will be elected. If Midway’s board of directors is increased beyond seven (7) members, increases shall occur in increments of two (2) and the Preferred Governance Majority will have the right to designate one (1) additional director nominee for election or appointment as director. The Preferred Governance Majority has the right to fill any vacancy of the Preferred Director position. The director appointment rights terminates if there are less than 7,567,568 Series A Preferred Shares issued and outstanding. These rights are subject to approval of the holders of a majority of the Common Shares.

**Dividend Rights:** Series A Preferred Shares will be entitled to an annual 8% dividend, compounded monthly and payable quarterly in cash or, at the option of Midway and subject to certain conditions, in common shares. Dividends are payable beginning on April 1, 2013, and thereafter be paid on the first business day of each following quarter, beginning July 2, 2013. Midway may elect to pay dividends in Common Shares based on the closing price on NYSE MKT the day before the dividend is paid; provided that the issuance is an exempt purchase pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended. No dividend or other distribution greater than the Series A Preferred Dividend will be paid, declared or set apart for payment in respect of any Common Shares or shares of any other class ranking junior to the Series A Preferred Shares in

respect of dividends (and the Series A Preferred Shares are deemed to rank senior to each class of shares that is created before it).

**Liquidation Preference:** Series A Preferred Shares shall have a liquidation preference equal to 125% of the initial issue price of the Series A Preferred Shares (initially US\$1.85) plus any accrued dividends in connection with certain liquidation events, including:

- (a) a voluntary or involuntary liquidation, dissolution or winding-up of the Registrant's affairs;
- (b) any merger, amalgamation, reorganization, arrangement, acquisition or other similar transaction of Midway with another person or entity, pursuant to which the holders of voting securities of Midway immediately prior to the transaction hold (assuming an immediate and maximum exercise/conversion of all derivative securities issued in the transaction), immediately after such transaction, directly or indirectly, less than 50% of the voting power to elect directors of Midway resulting from the transaction (unless not deemed a liquidation event as provided in the Series A Rights);
- (c) a sale, lease, conveyance or other disposition of all or substantially all of the property or business of the Registrant (directly or through a subsidiary) or the sale of substantially all of the properties, title, or rights related to the properties owned by Midway's U.S. subsidiary or U.S. affiliate in White Pine County, Nevada (unless not deemed a liquidation event as provided in the Series A Rights); or
- (d) the Common Shares are no longer listed or traded on any of the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, Inc., the NYSE MKT LLC, the NASDAQ Global Select Market, the NASDAQ Capital Market or the OTC Bulletin Board.

**Conversion Rights:** Series A Preferred Share have the following conversion terms:

Conversion: Each Series A Preferred Share is convertible into one Midway Common Share, subject to adjustment for stock splits and recapitalizations, at any time by the holder of Series A Preferred Shares.

Mandatory Conversion: Midway has the option to the right to force the conversion of the Series A Preferred Shares after 1 year, subject to certain conditions, including, but not limited to: (a) the Common Shares trade on the NYSE MKT or other eligible market above \$3.70, as adjusted for stock splits and recapitalizations, for 20 consecutive trading days; (b) the Common Shares are registered for resale under the U.S. Securities Act or can be resold under Rule 144 without volume limitations; (c) no public announcement has been made of a pending or proposed liquidation event; (d) holders are not in possession of non-public material information; (e) no black-out period restricting the sale of Common Shares; (f) the issuance is an exempt purchase pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended; and (g) the number of Series A Preferred Shares subject to the mandatory conversion will be calculated as of the date of the conversion based on the product of (i) the aggregate number of common shares issuable by Midway to all holders of Series A Preferred Shares upon such conversion multiplied by (ii) the average of the dollar volume-weighted average price for such common shares on NYSE MKT during the period beginning at 9:30:01 a.m., New York time and ending at 4:00:00 p.m., New York time, as reported by Bloomberg through its "Volume at Price" function for each of the twenty (20) consecutive trading days immediately prior to the conversion shall not exceed 30% of the average of the aggregate dollar trading volume of common stock traded on the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, Inc., the NYSE MKT LLC, the NASDAQ Global Select Market, the NASDAQ Capital Market and the OTC Bulletin Board for the five (5) consecutive trading days for each of the twenty (20) consecutive trading days immediately preceding the applicable conversion.

**Mandatory Redemption:** Five (5) years after the date of issuance the Series A Preferred Shares are redeemable by either Midway or the holders of Series A Preferred Shares for cash at US\$1.85 per share, as adjusted for stock splits and recapitalizations. The redemption payment is payable in legal available funds within 30 days after a redemption notice. If Midway is prohibited from redeeming Series A Preferred Shares, then the Registrant shall distribute all of the legally available funds to the holders of the Series A Preferred Shares and repay any amounts otherwise due in equal quarterly payments for a period of two (2) years from the date that is five (5) years after the date of issuance of the Series A Preferred Shares.



If the redemption is not completed during the two year period, the Preferred Super Majority may (i) voting as a single class (to the exclusion of the holders of all other securities and classes of capital stock of the Company), vote to elect such number of additional directors which shall constitute a majority of Midway's Board of Directors, and the number of directors constituting the Company's Board of Directors shall automatically be increased as necessary, and (ii) in the event it is not permitted, the Preferred Super Majority may sell, as may be permitted by applicable law, on behalf of the Company the assets of the Company, in its discretion, that are sufficient to redeem the remaining Series A Preferred Shares. The director appointment rights are subject to approval of the holders of a majority of the Common Shares.

### Registration Rights Agreement

In connection with the Private Placement, Midway entered into a Registration Rights Agreement with the Investors, under which Midway will register the Common Shares issued or issuable upon conversion of the Series A Preferred Shares and upon payment of a dividend in kind. Under the Registration Rights Agreement, Midway has agreed, within 90 days after closing, to use all commercially reasonable efforts to prepare and file with the SEC a registration statement on Form S-3 (or such other form as available if Form S-3 is not available) and a Canadian prospectus covering the resale of all of the common shares common shares issued or issuable upon conversion of the Series A Preferred Shares. Midway will maintain the effectiveness of the registration statement until all Common Shares have been sold or may be sold without registration under Rule 144 of the U.S. Securities Act without any limitation as to volume or manner of sale requirements. The Registration Rights Agreement contains customary terms and conditions and does not provide for any specific cash settlement or liquidated damage payments.

### Side Letter

In connection with the Private Placement, Midway entered into a side letter with the Investors providing for certain board nomination and committee appointment rights, including the following:

Nomination Right: The Lead Investor has the right to the right to nominate one (1) director nominee for election to the Midway's board of directors to stand for election at each annual or special meeting of shareholders of the Registrant or action by written consent of shareholders at which directors will be elected. Nathaniel Klein, a current director and Vice President of Hale Capital Partners, L.P., shall be nominated as the initial director to stand for election to Midway's board of directors at the next annual shareholders meeting.

Nomination and Election Right: The side letter also provides for Series A Preferred Share director nomination and election rights consistent with the Series A Rights. These rights are subject to approval of the holders of Common Shares.

Director Vacancy and Observation Right: At closing of the Private Placement, Nathaniel Klein will resign as a director and Martin Hale will be appointed as a director by the board in his place. Nathaniel Klein shall maintain observation rights to the board until his election to the board at the next annual general meeting of the Registrant.

Common Share Approval: Midway has agreed to seek Common Shareholder approval of the Series A Preferred Share director nomination and appointment rights at the next annual or special meeting of the shareholders and at each meeting thereafter until such approval is obtained.

Committee Appointments: Midway has agreed to appoint Martin Hale, President of Hale Capital Partners, L.P., or his nominee to Midway's nominating committee and compensation committee of the Board of Directors. In addition, Midway has agreed to form a budget and work program committee, consisting of three non-executive directors, one of whom will be either Martin Hale or upon his election to the board the Preferred Director, and the Chief Executive Officer (CEO), whose mandate shall be to review and approve the annual business and financing plans and capital and operating budgets (and any modifications of, or deviations from such plans or budgets). Any and all approvals of the committee relating to such plans and budgets must be unanimous; provided that Martin Hale or the Preferred Holder Director, as the case may be, and the CEO of the Company shall cooperate and work together in good faith to resolve any issues that the committee has identified as an impediment to their unanimous approval.

The foregoing summary of certain aspects of the Private Placement is qualified in its entirety by reference to the Share Purchase Agreement, Registration Rights Agreement, Side Letter, and Series A Rights, copies of which are filed as, respectively, Exhibits 10.1, 10.2, 10.3 and 3.1 to this Current Report on Form 8-K and which are hereby incorporated by reference into this Item 1.01.

### **Item 3.02 Unregistered Sales of Equity Securities**

The offer and sale of the Series A Preferred Shares is anticipated to be exempt from registration under Section 4(a)(2) and Regulation D Rule 506 of the U.S. Securities Act. The Private Placement will be conducted with limitations on resale and no general solicitation, and each purchaser of the Series A Preferred Shares will be an “Accredited Investor” as defined under Rule 501(a) of Regulation D.

### **Item 9.01. Exhibits**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
3.1	Form of Series A Preferred Rights (Amendment)
10.1	Share Purchase Agreement
10.2	Registration Rights Agreement
10.3	Side Letter

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**MIDWAY GOLD CORP.**

DATE: November 26, 2012

By: /s/ Kenneth A. Brunk  
Kenneth A. Brunk  
Chairman, President and CEO

**EXHIBIT INDEX**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
3.1	Form of Series A Preferred Rights (Amendment)
10.1	Share Purchase Agreement
10.2	Registration Rights Agreement
10.3	Side Letter

## EXHIBIT 3



## Midway Gold Announces US\$70 Million Strategic Financing

November 21, 2012

Denver, Colorado – Midway Gold Corp. ("Midway" or the "Company") (TSX VENTURE:MDW) (NYSE MKT:MDW) is pleased to announce that it has arranged a US\$70 million private placement financing of five year 8% convertible Series A Preferred shares at a price of US\$1.85 per share ("Preferred Shares").\

Kenneth A. Brunk, Midway's Chairman, President and CEO said, "Midway is pleased to welcome lead investor Hale Capital Partners, L.P. as a key strategic financial partner in the pursuit of the Company's goal of becoming a Nevada gold producer in the near term. This is a very important step forward for Midway as we have dramatically reduced financing risk in uncertain times, and have done so without incurring hedging on our future gold production or committing to any security over our assets, all while seeking to minimize equity dilution to our shareholders."

Martin Hale, CEO and Portfolio Manager of Hale Capital Partners, L.P., said, "We have been investors in Midway since 2010 and that history, the quality of the team and properties, and management execution have given us great confidence in supporting the Company."

The conversion price of the Preferred Shares represents a significant premium of 37% to the closing price of the Company's shares on November 20<sup>th</sup>, 2012.

The primary use of proceeds from the private placement will be to advance the Pan heap leach gold project towards production, including the ordering of long-lead time capital equipment, as well as engineering studies to advance the Gold Rock project.

The Private Placement is subject to customary closing conditions and deliverables. Midway anticipates executing final documentation and closing the private placement on or before December 13<sup>th</sup>, 2012.

### Key Terms of the Preferred Shares:

- US\$70 million Offering at a price of US\$1.85 per Preferred Share.
- Each Preferred Share is convertible into Common Shares of the Company on a 1 to 1 basis.
- Holders of the Preferred Shares are entitled to receive an annual, cumulative preferred 8% dividend payable quarterly in cash or common shares, at the Company's option.
- Preferred Shares are redeemable by either the Company or the holders after five years from the date of issuance for cash equal to the conversion price, initially US\$1.85.
- After a period of one year, subject to certain price and volume conditions, the Company may force the conversion of the Preferred Shares to common shares on a 1 to 1 basis.
- Preferred Shares have a liquidation preference equal to 125% of the issue price of the Preferred Shares in connection with certain liquidation events.
- Except as otherwise required by law, the holders of Preferred Shares will be entitled to vote their shares, on an as converted basis, at meetings of the shareholders of the Company.

- Upon common shareholder approval at the next annual general meeting of the Company, the holders of Preferred Shares shall be entitled to nominate and elect a Director of the Company.
- The issuance of common shares below a price of US\$1.85 or repurchase any common shares, requires the consent of a designated Preferred Shareholder.
- No fees or commissions are payable in connection with this placement.
- The investors have been granted registration rights under a Registration Rights Agreement and other rights related to board and committee appointments under a side letter.

Neither the Preferred Shares nor the Common Shares issuable upon exercise of the Preferred Shares or in lieu of cash dividend payments have been registered under the United States Securities Act of 1933, as amended, or the securities laws of any state. The securities may be offered or sold only under exemptions from these registration requirements. This press release does not constitute an offer of securities.

## ON BEHALF OF THE BOARD

"Kenneth A. Brunk"

Kenneth A. Brunk, Chairman, President and CEO

## About Midway Gold Corp.

Midway Gold Corp. is a precious metals company with a vision to explore, design, build and operate gold mines in a manner accountable to all stakeholders while assuring return on shareholder investments. For more information about Midway, please visit our website at [www.midwaygold.com](http://www.midwaygold.com) or contact R.J. Smith, Vice President of Administration, at (877) 475-3642 (toll-free).

*Neither the TSX Venture Exchange, its Regulation Services Provider (as that term is defined in the policies of the TSX Venture Exchange) nor the NYSE MKT accepts responsibility for the adequacy or accuracy of this release.*

*This press release contains forward-looking statements within the meaning of Canadian and United States securities laws about the Company and its business which may include, but is not limited to, the intended terms of the private placement, closing of the private placement and use of proceeds. Such forward-looking statements and forward-looking information reflect our current views with respect to future use of proceeds and are subject to certain risks, uncertainties and assumptions, including but not limited to risks related to delays in closing, the receipt of regulatory approvals and changes in market conditions. Forward looking statements are statements that are not historical facts and include, but are not limited to, statements about the Company's intended work plans and resource estimates and potential offering of common shares of the Company from time to time. The forward-looking statements in this press release are subject to various risks, uncertainties and other factors that could cause the Company's actual results or achievements to differ materially from those expressed in or implied by forward looking statements. These risks, uncertainties and other factors include, without limitation, risks related to the timing and completion of the Company's intended work plans, risks related to fluctuations in gold prices; uncertainties related to raising sufficient financing to fund the planned work in a timely manner and on acceptable terms; changes in planned work resulting from weather, logistical, technical or other factors; the possibility that results of work will not fulfill expectations and realize the perceived potential of the Company's properties; uncertainties involved in the interpretation of drilling results and other tests and the estimation of gold resources and reserves; the possibility that required permits may not be obtained on a timely manner or at all; the possibility that capital and operating costs may be higher than currently estimated and may preclude commercial development or render operations uneconomic; the possibility that the estimated recovery rates may not be achieved; risk of accidents, equipment breakdowns and labor disputes or other unanticipated difficulties or interruptions; the possibility of cost overruns or unanticipated expenses in the work program; and other factors identified in the Company's SEC filings and its filings with Canadian securities regulatory authorities. Forward-looking statements are based on the beliefs, opinions and expectations of the Company's management at the time they are made, and other than as required by applicable securities laws, the Company does not assume any obligation to update its forward-looking statements if those beliefs, opinions or expectations, or other circumstances, should change.*