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

CORRECTED

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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

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."

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.

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 or contact Jaime Wells, Investor Relations Analyst, at 720-979-0900.

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. Forward-looking statements are typically identified by words such as: "may", "should", "plan", "believe", "predict", "expect", "anticipate", "intend", "estimate", postulate" and similar expressions or the negative of such expressions or which by their nature refer to future events. 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; changes in interest and currency exchanges rates; local and community impacts and issues; environmental costs and risks; 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. Although the Company believes that such forward-looking statements are reasonable, it can give no assurance that such expectations will prove to be correct. For the reasons set forth above, investors should not attribute undue certainty to or place undue reliance on forward-looking statements.

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 Blacketor, 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

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

Eric B. Liebman
Moye White LLP
16 Market Square 6th Floor
1400 16th Street
Denver CO 80202
Email: 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

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.

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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

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

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.

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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

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

MIDWAY DIRECTORS AND OFFICERS:

KENNETH A. BRUNK

RICHARD SAWCHAK

RICHARD MORITZ

FRANK YU

BRAD BLACKETOR

JOHN SHERIDAN

TIMOTHY HADDON

ROGER NEWELL

MARTIN HALE

RODNEY KNUTSON

TREY ANDERSON

NATHANIEL KLEIN

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BRAD BLACKETOR	JOHN SHERIDAN
TIMOTHY HADDON	ROGER NEWELL
MARTIN HALE	RODNEY KNUTSON
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DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL E. WOLFUS, ,

Plaintiff,
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; 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-C
DEPT. NO.: X

ACCEPTANCE OF SERVICE

Acceptance of Service of the Summons and First Amended Complaint on behalf of Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John

W. Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson (collectively, "Defendants") is hereby acknowledged on the 10th day of July 2017. Defendants expressly reserve all rights and defenses.

DATED this 10th day of July 2017.

By _____
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David J. Freeman, Esq.
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9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Holly Stein Sollod, Esq. *(Pro Hac Vice Pending)*
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Denver, CO 80202

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

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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.

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.

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

ACCEPTANCE OF SERVICE

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 7th day of July, 2017.

///

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3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

Defendants expressly reserve all rights and defenses.

DATED this 19 day of July, 2017.

GREENBERG TRAURIG, LLP

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(NV Bar No. 1625)
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Counsel for Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID II, LLC, and HCP-MID, LLC

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DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL E. WOLFUS,

Plaintiff,

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; 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-C
Dept. No.: X

ACCEPTANCE OF SERVICE

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

ORDG
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DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL E. WOLFUS, ,

Plaintiff,
v.

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

This matter came before this Court for hearing on November 1, 2017 at 9:30 a.m., on Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson (collectively, the "D&O Defendants") *Motion to Dismiss Amended Complaint* (the "Motion"), Defendants Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID II, LLC and HCP-MID, LLC (collectively, the "Hale Defendants") *Motion to Dismiss and Joinder* thereto (the "Hale Joinder") and Defendant Kenneth A. Brunk ("Brunk") *Motion to Dismiss and Joinder* thereto (the "Brunk Joinder"), wherein the D&O Defendants, Hale Defendants and Brunk (collectively, the "Defendants") moved this Court to dismiss the *First Amended Complaint for Damages* filed by Plaintiff Daniel E. Wolfus ("Wolfus" or "Plaintiff") on June 30, 2017 (the "Complaint").

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

Having carefully considered the D&O Defendants' Motion, Hale Joinder, Brunk Joinder, Errata to the Brunk Joinder, Plaintiff's *Consolidated Memorandum of Points and Authorities in Opposition to Motions to Dismiss*, the Defendants' respective reply memorandums filed in support of the Motion, together with all declarations filed in support of and opposition to the Motion and Joinders, including the exhibits to the declarations, the oral argument of counsel presented at the hearing on this matter, and good cause appearing, the Court hereby finds and concludes as follows:

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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

stock. In September 2014, Wolfus and/or his assignors acquired an additional 1,000,000 shares of common stock and as of December 23, 2014, and after the sale of some shares, the combined shareholdings of Wolfus and/or his assignors were 2,402,251 shares of Midway common stock. Certain of these share purchases were made directly from Midway after Wolfus ceased to be an officer or director of Midway and were made pursuant to the exercise of stock options previously granted to Wolfus. *Id.* ¶¶ 1, 20 and 23.

5. As of October 8, 2013, Wolfus or his assignors owned 1,609,117 shares of Midway's common stock. *Id.* ¶ 96.

6. In 2009, Plaintiff became Chairman of the Board and the Chief Executive Officer of Midway, serving in both capacities until May 18, 2012 when he was replaced by Brunk. *Id.* ¶ 21.

7. In May 2010, Brunk was hired by Midway as its President and Chief Operating Officer with the primary assignment to bring the Pan project into production. *Id.* ¶ 30.

8. Brunk served in that capacity until May 2012 at which time he also became Chairman of the Board and CEO after Midway's Board of Directors voted to replace Plaintiff in these positions. *Id.* ¶¶ 30, 44.

9. Plaintiff, however, continued as a director until June 2013 and continued to receive board packages and participated in quarterly Board meeting which occurred prior to June 2013. *Id.* ¶ 44.

B. The 2011 Pan Mine Study.

10. At the time Plaintiff became Chairman of the Board and CEO, Midway had properties in the exploratory stage where gold mineralization had been identified (*see* Compl. at ¶ 24), including the Pan Mine (*see id.* ¶ 26).

11. Prior to May 2010, Midway made the decision to convert from a purely exploration company into a gold mining production company using the Pan Mine as its initial production mine. *Id.* ¶ 29.

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12. In November 2011, Midway reported the results of its Feasibility Study and its mining plan for the Pan Project. *Id.* ¶ 38.

13. In December 2011, Midway filed a feasibility study on the Pan Mine (the "2011 Pan Mine Study"). *Id.* ¶ 39.

14. As of December 31, 2013, Brunk, Hale, Newell, Sheridan, Yu, Knutson and Klein were each directors of Midway; Brunk was the Chairman, President and Chief Executive officer of Midway; Blacketor was a Senior Vice President and Chief Financial Officer of Midway; Moritz was the Senior Vice President of Operations of Midway; Brunk, Blacketor, Newell, Yu and Klein were each members of the Disclosure Committee of Midway; Sheridan, Yu and Knutson were each members of the Audit Committee of Midway; Brunk, Hale, Sheridan, Yu and Klein were each members of the Budget/Work Plan Committee; and Newell, Sheridan and Yu were each members of the Environment, Health and Safety Committee. In those capacities, each was responsible for insuring that Midway publically disclosed all material information concerning the Pan project and that all publically disclosed information concerning the Pan project was true and complete, was not misleading and did not omitted material facts. These defendants were collectively referred to as the 2013 Control Defendants. *Id.* ¶ 58.

15. Prior to December 13, 2013, Midway made numerous public filings and issued numerous press releases concerning Midway and the Pan project. See Complaint generally.

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

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

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

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

D. Modifying the permits to permit Run of Mine would have been time consuming delaying the time when Midway could start the leaching process. *Id.* ¶ 59.

17. Prior to August, 31, 2014, Midway made additional numerous public filings and issued numerous press releases concerning Midway and the Pan Project. See Complaint generally.

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

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19. As of August 31, 2014, the 2014 Control Defendants knew each of 2013 Undisclosed Facts and the following addition facts ("collectively the 2014 Undisclosed Facts") to be true, knew that each of those facts would be material to any reasonable investor in Midway including Wolfus, and knew that none of those facts had been disclosed to the public generally or to Wolfus:

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

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

C. Midway did not have the necessary facilities to process the gold solution once the leaching had been completed and it would be a considerable period before those facilities were constructed and permitted for operation. *Id.* ¶ 79.

C. Plaintiff Exercises Stock Options in 2014.

20. On January 7, 2014, Plaintiff notified Midway of his intent to exercise some of the stock options. At the time Plaintiff exercised these options he was not aware of any of the 2013 Undisclosed Facts, had no way of learning the 2013 undisclosed facts except from the 2013 Control Defendants, would not have exercised any of his options and would instead have sold his and his assignors' remaining Midway common shares. *Id.* ¶ 60.

21. On January 23, 2014, Plaintiff purchased 200,000 shares at $0.56/share for $112,000 Canadian Dollars ($100,636 USD). *Id.* ¶ 63.

22. On September 5, 2014, Plaintiff notified Midway of his intent to exercise some of the stock options. At the time Wolfus exercised these options he still was not aware of any of the 2014 Undisclosed Facts, had no way of learning the 2014 Undisclosed Facts except from the 2014 Control Defendants, would not have exercised any of his options had he known. *Id.* ¶ 80.

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23. On September 19, 2014, Plaintiff consummated his stock option exercise purchasing 1,000,000 shares at $0.86/share for $860,000 Canadian Dollars ($783,778 USD). *Id.* ¶ 82.

D. Plaintiff Asserts Claims Against Defendants.

24. Plaintiff asserts as his First Cause of Action a claim for securities fraud based upon the California Corporate Securities Law of 1968, California *Corporations Code* § 25000, *et seq.* (the "Act"). In that cause of action, Plaintiff alleges that in violation of California *Corporations Code* § 25401, the 2013 public filings by Midway which discussed the Pan project were materially false and misleading by failing to timely disclose each of the 2013 Undisclosed Facts and the failure by the 2013 Control Defendants to disclose the 2013 Undisclosed Facts was intentional and was done to encourage investors to retain and purchase Midway's common stock. Plaintiff further alleges that In violation of California *Corporations Code* § 25401, the pre-September 2014 public filings by Midway which discussed the Pan project were materially false and misleading by failing to timely disclose each of the 2014 Undisclosed Facts and the failure by the 2014 Control Defendants to disclose the 2014 Undisclosed Facts was intentional and was done to encourage investors to retain and purchase Midway's common stock. Each of the defendants was alleged as being liable as "controlling persons" of Midway. *Id.* ¶¶ 92-108.

25. Plaintiff asserts as his Second Cause of Action a claim under California law for breach of fiduciary duty against the 2013 Control Defendants arising out of their failure to disclose the 2013 Undisclosed Facts prior to Plaintiff stock option exercise in January 2014 and against the 2014 Control Defendants for their failure to disclose the 2013 Undisclosed Facts and the 2014 Undisclosed Facts prior to Plaintiff stock option exercise in September 2014. Each of the defendants was alleged to owe Plaintiff fiduciary duties as officers, directors and/or controlling persons of Midway. *Id.* ¶¶ 109-114.

26. Plaintiff asserts as his Third Cause of Action a claim under California law for aiding and abetting a breach of fiduciary duty full disclosure of all material facts owed to Plaintiff by Midway. *Id.* ¶¶ 115-121.

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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's 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]henever 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).[1] 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.*

[1] "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)).

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Unisys Corp., 11 F. Supp. 2d 788, 789 (D. Va. 1998) (holding that if the challenge is that the complaint fails to state sufficient facts to support subject matter jurisdiction the analysis is similar to a motion to dismiss for failure to state a claim).

B. Plaintiff Lacks Standing to Assert Derivative Claims.

33. Rather, the focus is on the essential nature of the claims. *See Kramer v. W. Pac. Indus.*, 546 A.2d 348, 352 (Del. 1988) ("Whether a cause of action is individual or derivative must be determined from the nature of the wrong alleged and the relief, if any, which could result if plaintiff were to prevail.").

34. To distinguish between direct and derivative claims, Nevada "courts should consider only '(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'" *Parametric Sound Corp. v. Eighth Judicial Dist. Court*, 66689, 2017 WL 4078845, *7 (Nev. Sept. 14, 2017) (quoting *Tooley v. Donaldson, Lufkin, & Jenrette, Inc.*, 845 A.2d. 1031, 1033 (Del. 2004)).

35. Having carefully considered who suffered the harm alleged in the Complaint, and who would receive the benefit of any recovery, the Court concludes that Plaintiff's claims are derivative in nature under the Direct Harm test recently adopted by the Nevada Supreme Court in *Parametric Sound Corp.*

36. Although Plaintiff frames his damages as arising from the exercise of his stock options and corresponding purchase of Midway shares, reading the Complaint as a whole indicates the alleged harm suffered by Plaintiff stems from his shares becoming valueless after acquiring them.

37. Claims premised on harm caused by the reduction in value of shares of stock are inherently derivative as the reduction in value arises from the reduction of the entire value of the corporation, and such an equal injury is not a specific direct harm to each shareholder individually. *Id.*

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38. Because Plaintiff failed to allege any direct harm, the claims are derivative and Plaintiff lacks standing to assert such claims.

C. Under the Internal Affairs Doctrine, British Columbia Law Vests Exclusive Jurisdiction in the Supreme Court of British Columbia to Adjudicate Plaintiff's Derivative Claims.

39. This case concerns the internal management of a Canadian corporation and that, as a result, the internal affairs doctrine requires this Court to apply the law of the jurisdiction where the corporation was incorporated (British Columbia, Canada) to determine whether it has subject matter jurisdiction to hear Plaintiff's claims. *See Dictor v. Creative Mgmt. Servs., LLC.*, 223 P.3d 332, 335 (Nev. 2010) (noting that Nevada has adopted the Restatement (Second) of Conflict of Laws as the relevant authority for its choice-of-law jurisprudence in tort cases); *see also Hausman v. Buckley*, 299 F.2d 696, 702 (2d Cir. 1962) (internal affairs doctrine "is well established and generally followed throughout this country").

40. Because Midway is a British Columbia corporation, its internal affairs are governed by the Business Corporations Act ("BCA") of British Columbia, which endows its Supreme Court with exclusive jurisdiction over derivative claims involving British Columbia corporations. *See* BCA at §§ 232 & 233.

41. Under the BCA, a shareholder or director of a British Columbia corporation must satisfy two separate and mandatory preconditions before bringing a derivative suit involving the corporation: (a) the complainant must provide notice to the directors prior to initiating the action; and (b) the complainant must obtain judicial permission from the Supreme Court of British Columbia to bring the derivative action prior to filing suit. *See id.*

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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. Pasionek*, 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.

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47. Furthermore, Midway's proposed *Second Amended Joint Chapter 11 Plan of Liquidation* (the "Plan") expressly transfers Plaintiff's derivative claims to its liquidating trust, which will become the party with exclusive authority to prosecute such claims for the benefit of Midway's general unsecured creditors.

48. Because Plaintiff's derivative claims are being exclusively administered in Midway's bankruptcy case for the benefit of its general unsecured creditors pursuant to the Plan, Plaintiff lacks standing to assert such claims.

WHEREFORE, having made the foregoing findings of fact and conclusions of law and oral findings on the record, and good cause appearing,

IT IS HEREBY ORDERED that the *D&O Defendants' Motion to Dismiss Amended Complaint* is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that the Hale Defendants' *Motion to Dismiss and Joinder* is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that Brunk's *Motion to Dismiss and Joinder* is **GRANTED**.

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IT IS HEREBY FURTHER ORDERED that Plaintiff is granted leave to amend, provided that a Second Amended Complaint is filed within 30 days of filing and service of the Notice of Entry of this Order.

IT IS SO ORDERED.

DATED this 4 day of ~~December~~ Jan. 2017.

Nancy L Allf
DISTRICT COURT JUDGE

AE

Respectfully submitted by:

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DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL E. WOLFUS, ,

Plaintiff,

v.

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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PLEASE TAKE NOTICE that an Order Granting Defendants' Motion to Dismiss Amended Complaint Without Prejudice was entered in the above-captioned matter on January 5, 2018. A copy of said Order is attached hereto.

DATED this 8th day of January, 2018.

By __/s/ David J. Freeman_____
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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.

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL E. WOLFUS, ,

Plaintiff,
v.

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

This matter came before this Court for hearing on November 1, 2017 at 9:30 a.m., on Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson (collectively, the "D&O Defendants") *Motion to Dismiss Amended Complaint* (the "Motion"), Defendants Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID II, LLC and HCP-MID, LLC (collectively, the "Hale Defendants") *Motion to Dismiss and Joinder* thereto (the "Hale Joinder") and Defendant Kenneth A. Brunk ("Brunk") *Motion to Dismiss and Joinder* thereto (the "Brunk Joinder"), wherein the D&O Defendants, Hale Defendants and Brunk (collectively, the "Defendants") moved this Court to dismiss the *First Amended Complaint for Damages* filed by Plaintiff Daniel E. Wolfus ("Wolfus" or "Plaintiff") on June 30, 2017 (the "Complaint").

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

Having carefully considered the D&O Defendants' Motion, Hale Joinder, Brunk Joinder, Errata to the Brunk Joinder, Plaintiff's *Consolidated Memorandum of Points and Authorities in Opposition to Motions to Dismiss*, the Defendants' respective reply memorandums filed in support of the Motion, together with all declarations filed in support of and opposition to the Motion and Joinders, including the exhibits to the declarations, the oral argument of counsel presented at the hearing on this matter, and good cause appearing, the Court hereby finds and concludes as follows:

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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

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stock. In September 2014, Wolfus and/or his assignors acquired an additional 1,000,000 shares of common stock and as of December 23, 2014, and after the sale of some shares, the combined shareholdings of Wolfus and/or his assignors were 2,402,251 shares of Midway common stock. Certain of these share purchases were made directly from Midway after Wolfus ceased to be an officer or director of Midway and were made pursuant to the exercise of stock options previously granted to Wolfus. *Id.* ¶¶ 1, 20 and 23.

5. As of October 8, 2013, Wolfus or his assignors owned 1,609,117 shares of Midway's common stock. *Id.* ¶ 96.

6. In 2009, Plaintiff became Chairman of the Board and the Chief Executive Officer of Midway, serving in both capacities until May 18, 2012 when he was replaced by Brunk. *Id.* ¶ 21.

7. In May 2010, Brunk was hired by Midway as its President and Chief Operating Officer with the primary assignment to bring the Pan project into production. *Id.* ¶ 30.

8. Brunk served in that capacity until May 2012 at which time he also became Chairman of the Board and CEO after Midway's Board of Directors voted to replace Plaintiff in these positions. *Id.* ¶¶ 30, 44.

9. Plaintiff, however, continued as a director until June 2013 and continued to receive board packages and participated in quarterly Board meeting which occurred prior to June 2013. *Id.* ¶ 44.

B. The 2011 Pan Mine Study.

10. At the time Plaintiff became Chairman of the Board and CEO, Midway had properties in the exploratory stage where gold mineralization had been identified (*see* Compl. at ¶ 24), including the Pan Mine (*see id.* ¶ 26).

11. Prior to May 2010, Midway made the decision to convert from a purely exploration company into a gold mining production company using the Pan Mine as its initial production mine. *Id.* ¶ 29.

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12. In November 2011, Midway reported the results of its Feasibility Study and its mining plan for the Pan Project. *Id.* ¶ 38.

13. In December 2011, Midway filed a feasibility study on the Pan Mine (the "2011 Pan Mine Study"). *Id.* ¶ 39.

14. As of December 31, 2013, Brunk, Hale, Newell, Sheridan, Yu, Knutson and Klein were each directors of Midway; Brunk was the Chairman, President and Chief Executive officer of Midway; Blacketor was a Senior Vice President and Chief Financial Officer of Midway; Moritz was the Senior Vice President of Operations of Midway; Brunk, Blacketor, Newell, Yu and Klein were each members of the Disclosure Committee of Midway; Sheridan, Yu and Knutson were each members of the Audit Committee of Midway; Brunk, Hale, Sheridan, Yu and Klein were each members of the Budget/Work Plan Committee; and Newell, Sheridan and Yu were each members of the Environment, Health and Safety Committee. In those capacities, each was responsible for insuring that Midway publically disclosed all material information concerning the Pan project and that all publically disclosed information concerning the Pan project was true and complete, was not misleading and did not omitted material facts. These defendants were collectively referred to as the 2013 Control Defendants. *Id.* ¶ 58.

15. Prior to December 13, 2013, Midway made numerous public filings and issued numerous press releases concerning Midway and the Pan project. See Complaint generally.

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

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

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

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

D. Modifying the permits to permit Run of Mine would have been time consuming delaying the time when Midway could start the leaching process. *Id.* ¶ 59.

17. Prior to August, 31, 2014, Midway made additional numerous public filings and issued numerous press releases concerning Midway and the Pan Project. See Complaint generally.

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

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19. As of August 31, 2014, the 2014 Control Defendants knew each of 2013 Undisclosed Facts and the following addition facts ("collectively the 2014 Undisclosed Facts") to be true, knew that each of those facts would be material to any reasonable investor in Midway including Wolfus, and knew that none of those facts had been disclosed to the public generally or to Wolfus:

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

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

C. Midway did not have the necessary facilities to process the gold solution once the leaching had been completed and it would be a considerable period before those facilities were constructed and permitted for operation. *Id.* ¶ 79.

C. Plaintiff Exercises Stock Options in 2014.

20. On January 7, 2014, Plaintiff notified Midway of his intent to exercise some of the stock options. At the time Plaintiff exercised these options he was not aware of any of the 2013 Undisclosed Facts, had no way of learning the 2013 undisclosed facts except from the 2013 Control Defendants, would not have exercised any of his options and would instead have sold his and his assignors' remaining Midway common shares. *Id.* ¶ 60.

21. On January 23, 2014, Plaintiff purchased 200,000 shares at $0.56/share for $112,000 Canadian Dollars ($100,636 USD). *Id.* ¶ 63.

22. On September 5, 2014, Plaintiff notified Midway of his intent to exercise some of the stock options. At the time Wolfus exercised these options he still was not aware of any of the 2014 Undisclosed Facts, had no way of learning the 2014 Undisclosed Facts except from the 2014 Control Defendants, would not have exercised any of his options had he known. *Id.* ¶ 80.

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23. On September 19, 2014, Plaintiff consummated his stock option exercise purchasing 1,000,000 shares at $0.86/share for $860,000 Canadian Dollars ($783,778 USD). *Id.* ¶ 82.

D. Plaintiff Asserts Claims Against Defendants.

24. Plaintiff asserts as his First Cause of Action a claim for securities fraud based upon the California Corporate Securities Law of 1968, California *Corporations Code* § 25000, *et seq.* (the "Act"). In that cause of action, Plaintiff alleges that in violation of California *Corporations Code* § 25401, the 2013 public filings by Midway which discussed the Pan project were materially false and misleading by failing to timely disclose each of the 2013 Undisclosed Facts and the failure by the 2013 Control Defendants to disclose the 2013 Undisclosed Facts was intentional and was done to encourage investors to retain and purchase Midway's common stock. Plaintiff further alleges that In violation of California *Corporations Code* § 25401, the pre-September 2014 public filings by Midway which discussed the Pan project were materially false and misleading by failing to timely disclose each of the 2014 Undisclosed Facts and the failure by the 2014 Control Defendants to disclose the 2014 Undisclosed Facts was intentional and was done to encourage investors to retain and purchase Midway's common stock. Each of the defendants was alleged as being liable as "controlling persons" of Midway. *Id.* ¶¶ 92-108.

25. Plaintiff asserts as his Second Cause of Action a claim under California law for breach of fiduciary duty against the 2013 Control Defendants arising out of their failure to disclose the 2013 Undisclosed Facts prior to Plaintiff stock option exercise in January 2014 and against the 2014 Control Defendants for their failure to disclose the 2013 Undisclosed Facts and the 2014 Undisclosed Facts prior to Plaintiff stock option exercise in September 2014. Each of the defendants was alleged to owe Plaintiff fiduciary duties as officers, directors and/or controlling persons of Midway. *Id.* ¶¶ 109-114.

26. Plaintiff asserts as his Third Cause of Action a claim under California law for aiding and abetting a breach of fiduciary duty full disclosure of all material facts owed to Plaintiff by Midway. *Id.* ¶¶ 115-121.

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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's 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]henever 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).[1] 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.*

[1] "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)).

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Unisys Corp., 11 F. Supp. 2d 788, 789 (D. Va. 1998) (holding that if the challenge is that the complaint fails to state sufficient facts to support subject matter jurisdiction the analysis is similar to a motion to dismiss for failure to state a claim).

B. Plaintiff Lacks Standing to Assert Derivative Claims.

33. Rather, the focus is on the essential nature of the claims. *See Kramer v. W. Pac. Indus.*, 546 A.2d 348, 352 (Del. 1988) ("Whether a cause of action is individual or derivative must be determined from the nature of the wrong alleged and the relief, if any, which could result if plaintiff were to prevail.").

34. To distinguish between direct and derivative claims, Nevada "courts should consider only '(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'" *Parametric Sound Corp. v. Eighth Judicial Dist. Court*, 66689, 2017 WL 4078845, *7 (Nev. Sept. 14, 2017) (quoting *Tooley v. Donaldson, Lufkin, & Jenrette, Inc.*, 845 A.2d. 1031, 1033 (Del. 2004)).

35. Having carefully considered who suffered the harm alleged in the Complaint, and who would receive the benefit of any recovery, the Court concludes that Plaintiff's claims are derivative in nature under the Direct Harm test recently adopted by the Nevada Supreme Court in *Parametric Sound Corp.*

36. Although Plaintiff frames his damages as arising from the exercise of his stock options and corresponding purchase of Midway shares, reading the Complaint as a whole indicates the alleged harm suffered by Plaintiff stems from his shares becoming valueless after acquiring them.

37. Claims premised on harm caused by the reduction in value of shares of stock are inherently derivative as the reduction in value arises from the reduction of the entire value of the corporation, and such an equal injury is not a specific direct harm to each shareholder individually. *Id.*

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38. Because Plaintiff failed to allege any direct harm, the claims are derivative and Plaintiff lacks standing to assert such claims.

C. Under the Internal Affairs Doctrine, British Columbia Law Vests Exclusive Jurisdiction in the Supreme Court of British Columbia to Adjudicate Plaintiff's Derivative Claims.

39. This case concerns the internal management of a Canadian corporation and that, as a result, the internal affairs doctrine requires this Court to apply the law of the jurisdiction where the corporation was incorporated (British Columbia, Canada) to determine whether it has subject matter jurisdiction to hear Plaintiff's claims. *See Dictor v. Creative Mgmt. Servs., LLC.*, 223 P.3d 332, 335 (Nev. 2010) (noting that Nevada has adopted the Restatement (Second) of Conflict of Laws as the relevant authority for its choice-of-law jurisprudence in tort cases); *see also Hausman v. Buckley*, 299 F.2d 696, 702 (2d Cir. 1962) (internal affairs doctrine "is well established and generally followed throughout this country").

40. Because Midway is a British Columbia corporation, its internal affairs are governed by the Business Corporations Act ("BCA") of British Columbia, which endows its Supreme Court with exclusive jurisdiction over derivative claims involving British Columbia corporations. *See* BCA at §§ 232 & 233.

41. Under the BCA, a shareholder or director of a British Columbia corporation must satisfy two separate and mandatory preconditions before bringing a derivative suit involving the corporation: (a) the complainant must provide notice to the directors prior to initiating the action; and (b) the complainant must obtain judicial permission from the Supreme Court of British Columbia to bring the derivative action prior to filing suit. *See id.*

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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. Pasionek*, 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.

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47. Furthermore, Midway's proposed *Second Amended Joint Chapter 11 Plan of Liquidation* (the "Plan") expressly transfers Plaintiff's derivative claims to its liquidating trust, which will become the party with exclusive authority to prosecute such claims for the benefit of Midway's general unsecured creditors.

48. Because Plaintiff's derivative claims are being exclusively administered in Midway's bankruptcy case for the benefit of its general unsecured creditors pursuant to the Plan, Plaintiff lacks standing to assert such claims.

WHEREFORE, having made the foregoing findings of fact and conclusions of law and oral findings on the record, and good cause appearing,

IT IS HEREBY ORDERED that the *D&O Defendants' Motion to Dismiss Amended Complaint* is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that the Hale Defendants' *Motion to Dismiss and Joinder* is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that Brunk's *Motion to Dismiss and Joinder* is **GRANTED**.

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IT IS HEREBY FURTHER ORDERED that Plaintiff is granted leave to amend, provided that a Second Amended Complaint is filed within 30 days of filing and service of the Notice of Entry of this Order.

IT IS SO ORDERED.

DATED this 4 day of ~~December~~ Jan. 2017.

Nancy L Allf
DISTRICT COURT JUDGE

AE

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EIGHTH JUDICIAL DISTRICT COURT

DISTRICT OF NEVADA

DANIEL E. WOLFUS,

Plaintiff,

vs.

KENNETH A. BRUNK; RICHARD D. MORITZ; BRADLEY J. BLACKETOR; TIMOTHY HADDON; MARTIN M. HALE, JR.; TREY ANDERSON; RICHARD SAWCHAK; FRANK YU; JOHN W. SHERIDAN; ROGER A. NEWELL; RODNEY D. KNUTSON; NATHANIEL KLEIN; INV-MID, LLC, 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.: 10

SECOND AMENDED COMPLAINT FOR DAMAGES

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

NATURE OF THE CASE

1. Defendants caused Midway Gold Corp. ('Midway") to make material misstatements of fact and to omit material facts necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading. Defendants did so in public filings and press releases which were relied upon by Wolfus and which caused Wolfus to purchase Midway's common stock and to hold and not sell Midway's common stock.

2. Wolfus seeks only his own damages. Wolfus does not seek damages for harm suffered by Midway or any other shareholder of Midway. All recoveries sought belong solely to Wolfus, not to Midway or any other shareholder of Midway.

3. Wolfus brings only his own personal claims and those belonging to his assignors. Wolfus does not bring any claim that could be brought against any of the Defendants by Midway.

4. Wolfus brings direct claims, which belong to solely to Wolfus and not Midway or any other shareholder of Midway as found in: *Parametric Sound Corp. v. Eighth Judicial District Court Of The State Of Nevada*, 133 Nev. Advance Opinion 59 (September 14, 2017); *Tooley v. Donaldson, Lufkin & Jenrette, Inc.,* 845 A.2d 1031 (Del.2004); *Citigroup Inc., v. AHW Investment Partnership*, 140 A.3d 1125 (Del.

2016); *American Master Lease LLC v. Idanta Partners, Ltd.*, 225 Cal.App.4th 1451 (2014); and, *Small v. Fritz Companies, Inc.*, 30 Cal.4th 167 (2003).

5. Wolfus alleges five causes of action.

A. The First Cause of Action is for violation of California's Corporate Securities Act of 1968, *California Corporations Code* §§ 25000 *et seq*, (the "Act"). Section 25401 makes it unlawful for Midway to sell its common stock in California "by means of any written or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading." Section 25501 states Wolfus may recover personally, "the price at which the security was bought plus interest at the legal rate from the date of purchase." Wolfus purchased shares from Midway on January 23, 2014 and again on September 19, 2014 for $100,636 and $783,778. Defendants are liable to Wolfus for these damages pursuant to Sections 25403 and 25504 of the Act. Only Wolfus is entitled to recover damages for the two transactions.

B. The Second Cause of Action is for California common law breach of fiduciary duty owed by Midway's officers and directors directly to Wolfus as held in *Meister v. Mensinger,* 230 Cal.App.4th 381 (2014). This cause of action belongs solely to Wolfus and he is entitled to keep all recoveries thereon. While Midway also breached its fiduciary duties owed to Wolfus, Midway has not been

joined because of the bankruptcy stay. *Meister* provides that Wolfus may recover the market value of the stock owned by Wolfus in February 2014 and the amount paid for the shares purchased on September 19, 2014, with interest at 10% per annum.

C. The Third Cause of Action is for California common law aiding and abetting a breach of fiduciary duty owed by Midway directly to Wolfus as held in *American Master Lease LLC v. Idanta Partners, Ltd.,* 225 Cal.App.4th 1451 (2014). This cause of belongs solely to Wolfus and he may keep all recoveries thereon. *American Master Lease* provides that Wolfus may recover the market value of the stock owned by Wolfus in February 2014 and the amount paid for the shares purchased on September 19, 2014, with interest thereon at 10% per annum.

D. The Fourth Cause of Action is for California common law fraud 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 is entitled to recover the market value of the stock owned by Wolfus in February 2014 and the amount paid for the shares purchased on September 19, 2014, with interest thereon at 10% per annum.

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.

8. Defendant Kenneth A. Brunk ("Brunk") is an individual who Wolfus is informed and believes and thereon alleges was and now is a resident of Colorado. While with Midway, Brunk's contacts with Nevada were so continuous and systematic as to render him at home in Nevada.

9. Defendant Richard D. Moritz ("Moritz") is an individual who Wolfus is informed and believes and thereon alleges was and now is a resident of Colorado. While with Midway, Moritz's contacts with Nevada were so continuous and systematic as to render him at home in Nevada.

10. Defendant Bradley J. Blacketor ("Blacketor") is an individual who Wolfus is informed and believes and thereon alleges was and now is a resident of Colorado. While with Midway, Blacketor's contacts with Nevada were so continuous and systematic as to render him at home in Nevada.

11. Defendant Timothy J. Haddon ("Haddon") is an individual who Wolfus is informed and believes and thereon alleges was and now is a resident of Colorado. While with Midway, Haddon's contacts with Nevada were so continuous and systematic as to render him at home in Nevada.

12. Defendant Martin M. Hale, Jr., ("Hale") is an individual who Wolfus is informed and believes and thereon alleges was and now is a resident of New York. While with Midway, Hale's contacts with Nevada were so continuous and systematic as to render him at home in Nevada.

13. Defendant Trey Anderson ("Anderson") is an individual who Wolfus is informed and believes and thereon alleges was and now is a resident of New York. While with Midway, Anderson's contacts with Nevada were so continuous and systematic as to render him at home in Nevada.

14. Defendant Richard Sawchak ("Sawchak") is an individual who Wolfus is informed and believes and thereon alleges was and now is a resident of Virginia. While with Midway, Sawchak's contacts with Nevada were so continuous and systematic as to render him at home in Nevada.

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

16. Defendant John W. Sheridan ("Sheridan") is an individual who Wolfus is informed and believes and thereon alleges was and now is a resident of Vancouver, Canada. While with Midway, Sheridan's contacts with Nevada were so continuous and systematic as to render him at home in Nevada.

17. Defendant Roger A. Newell ("Newell") is an individual who Wolfus is informed and believes and thereon alleges was and now is a resident of Colorado. While with Midway, Newell's contacts with Nevada were so continuous and systematic as to render him at home in Nevada.

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

While with Midway, Knutson's contacts with Nevada were so continuous and systematic as to render him at home in Nevada.

19. Defendant Nathaniel E. Klein ("Klein") is an individual who Wolfus is informed and believes and thereon alleges was and now is a resident of New York. While with Midway, Klein's contacts with Nevada were so continuous and systematic as to render him at home in Nevada.

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

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

JURISDICTION AND VENUE

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

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

revenues from operations. Instead, Midway relied on capital raised by the sale of its common shares to fund its operations.

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

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

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

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

29. Wolfus began purchasing common stock of Midway 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 stock. In September 2014, Wolfus and/or his assignors acquired an additional 1,000,000 shares of common stock and as of December 23, 2014, and after the sale of some shares, the combined shareholdings of Wolfus and/or his assignors were 2,402,251 shares of Midway common stock. Certain of these share purchases were made directly from Midway after Wolfus ceased to be an officer or director of Midway and were made pursuant to the exercise of stock options previously granted to Wolfus.

30. At the time Wolfus became Chairman of the Board and CEO, Midway had the following properties in the exploratory stage where gold mineralization had been identified: Spring Valley, Pan, The Midway and Golden Eagle properties. Midway's Thunder Mountain, Roberts Creek, Gold Rock (formerly the Monte) Creek and Burnt Canyon projects were then in the early stage of gold and silver exploration. Of these projects, all are in Nevada except the Golden Eagle property in Washington.

31. In October 2008, Midway entered into an exploration agreement and possible joint venture agreement with a subsidiary of Barrick Gold Corporation for its Spring Valley project. The Spring Valley project was located 20 miles northeast of Lovelock, Nevada.

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

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

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

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

36. In May, 2010, Brunk was hired by Midway as its President and Chief Operating Officer with the primary assignment to bring the Pan project into production. In that capacity, Brunk was required to personally oversee both mining activities in Nevada and permitting activities in Nevada and frequently was in Nevada to perform these duties. Brunk served in that capacity until May of 2012, at which time he also became the Chairman of the Board and Chief Executive Officer of

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

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

38. Moritz was the Senior Vice President of Operations at Midway from July 2010 to May 2014. Moritz was hired to primarily oversee the Pan project. To perform these duties, Moritz was frequently in Nevada to directly oversee mining operations.

39. On February 3, 2011, Midway filed an 8-K and Press Release with the SEC in which Midway reported that it was moving forward with its Pan project with "possible production as early as 2013" and that Midway was working on a Prefeasibility Study for the Pan project. In its Annual Report filed on Form 10-K with

the SEC at the same time, Midway stated that it was "currently transitioning itself from an exploration company to a gold production company with plans to advance the Pan gold deposit located in White Pine County, Nevada through to production by as early as 2013."

40. On April 4, 2011, Midway issued a press release filed with the SEC in which it reported that it had secured a "positive Prefeasibility Study" for the Pan project. Midway also described in significant detail the method and manner by which Midway intended to mine the gold using conventional heap leaching methods prior to which the ore would be crushed by the primary in-pit mobile jaw crusher and secondary and tertiary cone crushers to a nominal 0.5 inches. Barren solution would then be distributed on the leach pad with drip tube emitters. The entire Prefeasibility Study performed by Gustavson was filed with SEDAR and the SEC and was publicly available on Edgar.

41. In a September 12, 2011 press release filed with the SEC, Midway reported its engineering team was in the process of completing a mine plan and a Feasibility Study for the Pan project and that the environmental team was working to complete a plan of operations for the proposed mine that will be submitted to the Bureau of Land Management ("BLM") for evaluation and development of an Environmental Impact Statement.

42. On October 6, 2011, Midway reported in a Press Release that Midway was negotiating with potential lenders to secure necessary funds for the Pan project.

Several major lenders had expressed interest in providing the necessary funds required for the Pan project.

43. On November 1, 2011, Midway filed with the SEC a favorable Updated Mineral Resource Estimate for the Pan project prepared by Gustavson.

44. On November 15, 2011, Midway reported by press release filed with the SEC the results of the Feasibility Study for the Pan project prepared by Gustavson ("Feasibility Study"). Midway stated that its mining plan would be to crush, agglomerate and place the ore on a heap leach pad with recoveries estimated to average 75%. Midway also reported that the capital costs to build the mine were estimated to be $99 million, including $8.2 million in working capital and $6.8 million contingency funds with total production costs projected to be $824/oz. of gold recovered. At that time, the price of gold was ~$1,700/oz.

45. On December 20, 2011, Midway filed the Feasibility Study with the SEC. Excerpts of that Feasibility Study are attached hereto as Exhibit 1 and incorporated herein by this reference. Among other items, this Study provides a detailed history of the mineral exploration of the Pan project, estimated gold deposits, an extremely detailed mining plan, a budget of ~$100 million for the project along with an extremely detailed breakdown of the needed equipment, and a projection of anticipated revenues at different levels of gold prices. Midway participated in the creation of the Feasibility Study. The Feasibility Study was never publicly updated or amended and this study formed the basis on which all necessary permits were sought.

46. In order to bring the Pan project into production, two major events needed to occur.

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

which further processing would take place. Most of the permitting process occurred in Nevada.

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

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

48. Sheridan became a Director of Midway in February 2012 and continued in that capacity until June 2015. During a portion of his tenure as a director, Sheridan served as a member or Chairman of Midway's Disclosure Committee and Audit Committee.

49. Prior to May 2012, Midway was approached by Hale, who was the CEO and Portfolio Manager of Hale Capital Partners, LP who was seeking to negotiate

what became a $70 million private placement of preferred stock with investors who Hale would secure. At the time these negotiations commenced, Wolfus was the CEO and Chairman of the Board of Midway and was the officer primarily involved in securing capital for Midway to fund its present and future operations. Moreover, Wolfus had been spending substantial time locating sources to fund the projected costs of both the Pan project and Midway's other on-going operations. Wolfus was opposed to the transaction proposed by Hale and Brunk was an ardent supporter of the transactions.

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

public filings made by Wolfus usually within a day or two following their release. Wolfus relied on this material in making all investment decisions concerning Midway including purchasing additional shares of Midway and whether to continue holding his and his assignors' Midway shares even though he was no longer involved with the management of Midway. Wolfus' share holdings were a material part of his investment portfolio in equity securities. As part of Wolfus' transition out of the management of Midway, Wolfus and Midway entered into a consulting arrangement primarily for the purpose of allowing certain of his stock options to vest. Each of the Defendants then with Midway knew of this purpose and knew that Wolfus' services as a consultant would never be utilized by Midway.

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

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

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

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

55. On December 13, 2012, Midway filed an 8-K and Press Release with the SEC, a true and correct copy of which is attached hereto as Exhibit 4 and incorporated herein by this reference. Exhibit 4 reports that the Hale transaction had closed, that Hale had become a director of Midway, and that Klein had resigned as a director, although he continued to attend Board meetings thereafter. In addition, Midway reported the formation of the "Budget Work Plan Committee as alleged above with

Brunk, Hale, Newell and Sheridan as its members. At all relevant times thereafter, Hale remained a director and a member of the Budget Work Plan Committee of Midway.

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

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

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

59. On July 30, 2013, Midway issued and filed with the SEC a Press Release dated July 30, 2013, a true and correct copy of which is attached hereto as Exhibit 5 and incorporated herein by this reference. In that release, Midway reported that it was exploring ways to reduce costs for the Pan project, expected to issue a revised Feasibility Study in the third quarter of 2013, had made significant progress in permitting, was pursuing a combination of project and equipment financing

alternatives, had received proposals from several major commercial funding sources to secure the necessary capital to fund the Pan project until a positive cash flow had been achieved, and expected to pour gold in August 2014.

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

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

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

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

64. As of December 31, 2013, Brunk, Hale, Newell, Sheridan, Yu, Knutson and Klein were each directors of Midway; Brunk was the Chairman, President and Chief Executive officer of Midway; Blacketor was a Senior Vice President and Chief Financial Officer of Midway; Moritz was the Senior Vice President of Operations of Midway; Brunk, Blacketor, Newell, Yu and Klein were each members of the Disclosure Committee of Midway; Sheridan, Yu and Knutson were each members of the Audit Committee of Midway; Brunk, Hale, Sheridan, Yu and Klein were each members of the Budget/Work Plan Committee; and Newell, Sheridan and Yu were each members of the Environment, Health and Safety Committee. In those capacities, each was responsible for insuring that Midway publicly disclosed all material information concerning the Pan project and that all publicly disclosed information concerning the Pan project was true and complete, was not misleading and did not omitted material facts. The foregoing defendants are collectively referred to as the "2013 Control Defendants."

65. As of December 13, 2013, the 2013 Control Defendants knew each of the following facts ("2013 Undisclosed Facts") to be true, knew that each of the following

facts would be material to any reasonable investor in Midway including Wolfus, and knew that none of those facts had been disclosed to the public generally or to Wolfus:

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

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

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

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

66. In late December and in early January 2014, Wolfus needed to decide whether to exercise some of his Midway stock options which would soon be expiring. In order to make this investment decision, Wolfus carefully reviewed and considered

Midway's press releases and public filings, primarily those which were issued after he ceased to be Midway's Chief Executive Officer. At the time, Wolfus had no reason to believe that any of the factual statements contained therein were false or that Midway had failed to omit material facts. In reliance thereon and on January 7, 2014, Wolfus notified Midway of his intention to exercise some of his stock options. Wolfus is informed and believes and thereon alleges that Defendants, and each of them, were aware of this exercise. At the time Wolfus exercised these options he was not aware of any of the 2013 Undisclosed Facts, had no way of learning the 2013 undisclosed facts except from the 2013 Control Defendants, would not have exercised any of his options and would instead have sold his and his assignors' remaining Midway common shares when Midway's stock peaked in February 2014.

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

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

69. On January 23, 2014, Wolfus consummated his stock option exercise purchasing 200,000 shares for $112,000 Canadian dollars which was then $100,636 US dollars.

70. Wolfus thereafter and on a daily basis checked on the market price of Midway's stock. When Midway's stock peaked on or about February 14, 2014, at $1.39[1], Wolfus decided to continue to hold his Midway shares and his assignors made the same decision based upon Wolfus advice. At the time Wolfus and his assignors made this decision to hold and not sell their Midway stock, Wolfus remained unaware of the 2013 Undisclosed Facts and also the fact that the Pan project was not fully permitted. Had Wolfus known any of the 2013 Undisclosed Facts or that the Pan project was not fully permitted, he and his assignors would have sold all of the Midway shares.

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

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

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

[1] The high at market closing per Bloomberg.

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

75. On May 16, 2014, Midway reported that Moritz had resigned.

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

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

78. On May 30, 2014, Midway filed with the SEC a prospectus for the sale of ~$25 million worth of common stock in a prearranged sale. The prospectus updated an earlier registration statement. The funds were to be used in substantial part for the Pan project. Under applicable securities laws, this prospectus was required to disclose all material facts related to the Pan project, among other disclosures. However, this prospectus failed to disclose any of the 2013 Undisclosed Facts or any of the 2014

Undisclosed Facts alleged below. In June 2014, Midway reported in a Press Release filed with the SEC that it completed this sale transaction.

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

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

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

82. In its August 6, 2014, quarterly report filed on Form 10-Q with the SEC, Midway reported that it had made a 5-year contract mining deal with Ledcor and had paid a $500,000 mobilization fee. On September 15, 2014, Midway reported in a Press Release filed with the SEC that Ledcor had in fact mobilized on site on July 21, 2014. At no time did Midway disclose what control, if any, it had over the timing of Ledcor's mining operations or the control that it had over Ledcor's loading ore on the leach pads. Loading of the ore on the leach pads according to the applicable permits then effect had to be carefully monitored and supervised by qualified individuals and only after the ore had been crushed and agglomerated in the manner described in the

Feasibility Study and the mining plan. Even if the ore was to be loaded on the leach pads Run of Mine, it still had to be carefully monitored and supervised by qualified individuals and only to a height not exceeding 15'. Additional ore could not be loaded on the leach pad until the approximately 2 month leaching process had occurred. Wolfus was not aware of these facts until after June 2015.

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

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

85. As of August 31, 2013, Brunk, Hale, Sawchak, Sheridan, Yu, Haddon and Klein were each directors of Midway; Haddon was Chairman of the Board, Brunk was the President and Chief Executive officer of Midway; Blacketor was a Senior Vice President and Chief Financial Officer of Midway; Brunk, Blacketor, Yu and Klein were each members of the Disclosure Committee of Midway; Sheridan, Yu and Sawchak were each members of the Audit Committee of Midway; Brunk, Hale, Sheridan, Yu and Klein were each members of the Budget/Work Plan Committee; and Haddon, Sheridan and Yu were each members of the Environment, Health and Safety Committee. In those capacities, each was responsible for insuring that Midway

publicly disclosed all material information concerning the Pan project and that all publicly disclosed information concerning the Pan project was true and complete, was not misleading and did not omitted material facts. The foregoing defendants are collectively referred to as the "2014 Control Defendants."

86. As of August 31, 2014, the 2014 Control Defendants knew each of 2013 Undisclosed Facts and the following addition facts ("collectively the 2014 Undisclosed Facts") to be true, knew that each of those facts would be material to any reasonable investor in Midway including Wolfus, and knew that none of those facts had been disclosed to the public generally or to Wolfus:

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

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

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

87. In late August and early September 2014, Wolfus needed to decide whether or not to exercise some of his Midway stock options which would soon be

expiring. In order to make this investment decision, Wolfus carefully reviewed and considered Midway's press releases and public filings, primarily those which were issued after he purchase shares in January 2014. At the time, Wolfus had no reason to believe that any of the factual statements contained therein were false or that Midway had failed to omit material facts. In reliance thereon and on September 5, 2014, Wolfus notified Midway of his intention to exercise some of his stock options. Wolfus is informed and believes and thereon alleges that defendants and each of them were aware of this exercise. At the time Wolfus exercised these options he still was not aware of any of the 2013 Undisclosed Facts or the 2014 Undisclosed Facts, had no way of learning those facts except from the 2014 Control Defendants, would not have exercised any of his options had he known those facts.

88. Between September 5 and 19, 2014, neither Midway nor any of the defendants provided Wolfus with any information not contained in Midway's then public filings, including the 2013 Undisclosed Facts and the 2014 Undisclosed Facts.

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

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

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

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

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

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

95. On June 22, 2015, Midway announced that it was filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code and shortly thereafter filed for bankruptcy.

96. As a result of the Midway Bankruptcy, all or virtually all of Midway's assets have been sold and there are no funds or recoveries by common shareholders of Midway.

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

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

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION

(SECURITIES FRAUD AGAINST

THE 2013 AND 2014 CONTROL DEFENDANTS)

99. Wolfus realleges the allegations contained in Paragraphs 1 through 98 as though fully set forth herein.

100. This is a claim for securities fraud based upon the California Corporate Securities Law of 1968, California *Corporations Code* § 25000, *et seq.* (the "Act"). Section 25401 of the Act makes it unlawful for Midway to sell its common stock in California "by means of any written or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary to make the

statements made, in the light of the circumstances under which the statements were made, not misleading." Section 25501 Act creates a private right of action for a purchaser and makes Midway, as the seller, liable to Wolfus, as the purchaser, for "the price at which the security was bought plus interest at the legal rate from the date of purchase." Wolfus purchased shares from Midway on January 23, 2014 and again on September 19, 2014 for $100,636 US dollars and $783,778, respectively and the legal rate of interest thereon is at 10% per annum. In addition to Midway, Defendants, and each of them, are liable for these damages pursuant to Sections 25403 and 25504. Only Wolfus is entitled to recover these damages for these two transactions. Defendants, and each of them, knew that at the time of purchase, Wolfus was a California resident entitled to pursue relief under the Act. All purchases of Midway's common stock were made by Wolfus in California.

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

102. On January 23, 2014, Wolfus purchased in California 200,000 shares of Midway's common stock directly from Midway at a purchase price of $.56 Canadian dollars per share or approximately $.50 US dollars per share. At that time, Midway's common stock was selling on the NYSE Amex exchange at $1.27 US dollars per share and its price was rising.

103. Midway was the issuer of the 200,000 shares purchased by Wolfus and as such was liable for any written or oral communication contained in its public filings

that included any untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in light of the circumstances under which the statements were made, not misleading.

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

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

106. In purchasing the 200,000 shares in January 2014, Wolfus had carefully read and reviewed and relied on the public filings of Midway and was unaware of the 2013 Undisclosed Facts. Had Wolfus known any of the 2013 Undisclosed Facts, Wolfus would not have purchased any shares in January 2014 or would have sold both his and his assignors common stock when the stock reached its peak in February 2014.

107. On September 19, 2014, Wolfus purchased in California 1,000,000 shares of Midway's common stock directly from Midway at a purchase price of $.86 Canadian dollars per share, which was approximately $.78 US dollars per share.

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

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

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

111. In purchasing shares in September 2014, Wolfus carefully reviewed and relied on the public filings of Midway and was unaware of the 2013 Undisclosed Facts or any of the 2014 Undisclosed Facts. Had Wolfus known any of the 2014 Undisclosed Facts or any of the 2013 Undisclosed Facts, Wolfus would not have purchased any shares in September 2014.

112. As a result, Wolfus has been damaged in an amount of $884,414.00 plus interest thereon at 10% per annum from date of purchase and reasonable attorney fees.

SECOND CAUSE OF ACTION

(BREACH OF FIDUCIARY DUTY

AGAINST THE 2013 AND 2014 CONTROL DEFENDANTS)

113. Wolfus realleges the allegations contained in Paragraphs 1 through 98, 102, 103, 105 through 107 and 111, as though fully set forth herein.

114. This is a claim for breach of fiduciary duty against the 2013 Control Defendants arising out of their failure to disclose the 2013 Undisclosed Facts prior to Wolfus stock purchase in January 2014 and against the 2014 Control Defendants for their failure to disclose the 2013 Undisclosed Facts and the 2014 Undisclosed Facts prior to Wolfus stock purchase in September 2014. This claim is based on California common law arising out of breaches of fiduciary duty owed by Midway's officers and directors directly to Wolfus and Wolfus' assignors as so held in *Meister v. Mensinger,* 230 Cal.App.4th 381 (2014). 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 breached its fiduciary duties owed to 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 *Meister,* provides that Wolfus is entitled to recover all damages proximately caused by the breach 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.

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

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

117. Had Wolfus known any of the 2013 Undisclosed Facts, Wolfus would have sold all of his shares of Midway and all of his assignors' shares of Midway in February 2014, when Midway's stock reached its peak and would not have purchased any additional shares in January or September 2014.

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

119. Defendants conduct was fraudulent entitling Wolfus to an award of punitive damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION

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

120. Wolfus realleges the allegations contained in Paragraphs 1 through 98, 102, 103, 105 through 107, 111, 115, 117 and 119, as though fully set forth herein.

121. This is a claim for California common law aiding and abetting a breach of fiduciary duty owed by Midway directly to Wolfus and Wolfus' assignors for which Defendants, and each of them, aided and abetted as so held in *American Master Lease LLC v. Idanta Partners, Ltd.,* 225 Cal.App.4th 1451 (2014). 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 breached its fiduciary duties owed to 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 *American Master Lease*, provides that Wolfus is entitled to recover all damages proximately caused by the breach 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.

122. Wolfus is informed and believes and thereon alleges that Does 1 through 20 are the underlying beneficial owners of the Hale Investors and as such indirectly through Hale controlled the Pan project and Midway at all times from and after June 2013.

123. Midway at all times after Wolfus ceased to be a member of Midway's Board of Directors owed Wolfus of full disclosure of all relevant facts related to the Pan project prior to selling 1.200,000 shares of Midway's common stock to Wolfus in 2014.

124. Midway breached its fiduciary duties to Wolfus in 2014 by failing to disclose the 2013 Undisclosed Facts prior to January 2014 and by failing to disclose the 2014 Undisclosed Facts prior to September 2014.

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

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

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

sell both his Midway shares and those of his assignors. Wolfus' assignors are immediate family members who totally relied on Wolfus' investment decisions. Wolfus was primarily concerned with the status of the Pan project and the likelihood that this project would begin profitably mining gold and be revenue positive. Wolfus determined from those public statements and the absence of the 2013 Undisclosed Facts that profitable mining operations would result in a substantial increase in the value of their combined Midway shares.

130. Following Wolfus' share purchases in January 2014, Wolfus continued to review and rely upon Midway's public filings and press releases and closely monitored the market price of Midway's shares. When the market price of those shares peaked in February 2014, Wolfus was again called upon to decide whether to hold his shares and those of his assignors or whether to sell those shares. Wolfus determined from the publicly available information from Midway that he and his assignors should continue to hold their Midway shares. Had Wolfus learned of any of the 2013 Undisclosed Facts, he would have sold all of his Midway shares and his assignor's Midway shares in February 2014 when Midway's stock price began to fall from its peak.

131. In late August or early September, 2014, Wolfus again needed to make a decision as to whether to purchase additional Midway shares or refrain from making any further purchases and instead sell his shares and those of his assignors. Wolfus again carefully reviewed all public filings and press releases issued by Midway since December 2013. Had Wolfus learned of any of the 2013 Undisclosed Facts or any of

the 2014 Undisclosed Facts at that time, he would have sold all of his Midway shares and his assignor's Midway shares in October 2014 when Midway's stock price began to fall from its peak.

132. Wolfus' reliance on the statements of fact contained in Midway's public filings and press releases and the absence of the 2013 Undisclosed Facts and the 2014 Undisclosed Facts in those filings was reasonable.

133. The 2013 Control Defendants intentionally defrauded Wolfus by failing to disclose or causing Midway to disclose the 2013 Undisclosed Facts.

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

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

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

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

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

FIFTH CAUSE OF ACTION

(NEGLIGENT MISREPRESENTATION

AGAINST THE 2013 AND 2014 CONTROL DEFENDANTS)

139. Wolfus realleges the allegations contained in Paragraphs 1 through 98, 102, 103, 105 through 107, 111, 109, 129 through 132 and 135 through 137, as though fully set forth herein.

140. This is a claim for California common law and statutory negligent misrepresentation 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 brought pursuant to 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 made negligent misrepresentations and omissions to 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 negligent misrepresentation

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.

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

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

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

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

145. Wolfus was ignorant of the 2013 Undisclosed Facts and the 2014 Undisclosed Facts in September 2014, had no ability to learn any of those facts prior to September 2014, and relied upon the absence of any of any disclosure of those facts

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

146. Wolfus first learned of the 2013 Undisclosed Facts and the 2014 Undisclosed Facts after June 2015.

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

PRAYER FOR RELIEF

WHEREFORE, Wolfus prays judgment against Defendants, as follows:

1. For damages in excess of $10,000.00, according to proof;

2. For exemplary or punitive damages, according to proof;

3. For interest thereon at 10% per annum;

4. For attorneys' fees;

5. For costs of suit; and

6. For such other and further relief as the Court deems just and proper.

Dated this 5th day of February, 2018.

/s/ James R. Christensen

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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 5th 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

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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

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.

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

North Pan Measured Resource			
Opt	**Tons**	**Au Opt**	**oz**
0.008	13,994,415	0.0168	234,844
0.006	15,592,007	0.0158	245,850
0.004	**18,597,319**	**0.0140**	**260,404**
North Pan Indicated Resource			
0.008	10,565,126	0.0146	154,540
0.006	12,702,959	0.0133	169,135
0.004	**17,006,845**	**0.0112**	**189,823**
North Pan Measured plus Indicated Resource			
0.008	24,559,541	0.0159	389,384
0.006	28,294,966	0.0147	414,985
0.004	**35,604,164**	**0.0126**	**450,228**
North Pan Inferred Resource			
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

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

$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

North and Central Pan **Cutoff Grade:** **0.008 opt / 0.274 g/tonnes**	**Tons**	**Gold**	
	(x 1000)	**opt**	**ounces (x 1000)**
North Pan			
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		
Central Pan			
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		
Sub Total - North + Central			
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.

South Pan - Phases 1 and 2 Cutoff Grade: 0.006 opt / 0.206 g/tonnes	Tons	Gold	
	(x 1000)	opt	ounces (x 1000)
South Pan - Phase 1			
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		
South Pan - Phase 2			
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		
Sub Total - Phase 1 + 2			
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		

Total Reserves	Tons	Gold	
	(x 1000)	opt	ounces (x 1000)
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.

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.

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^3 front end shovel as the main loading unit with a 16-yd^3 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.

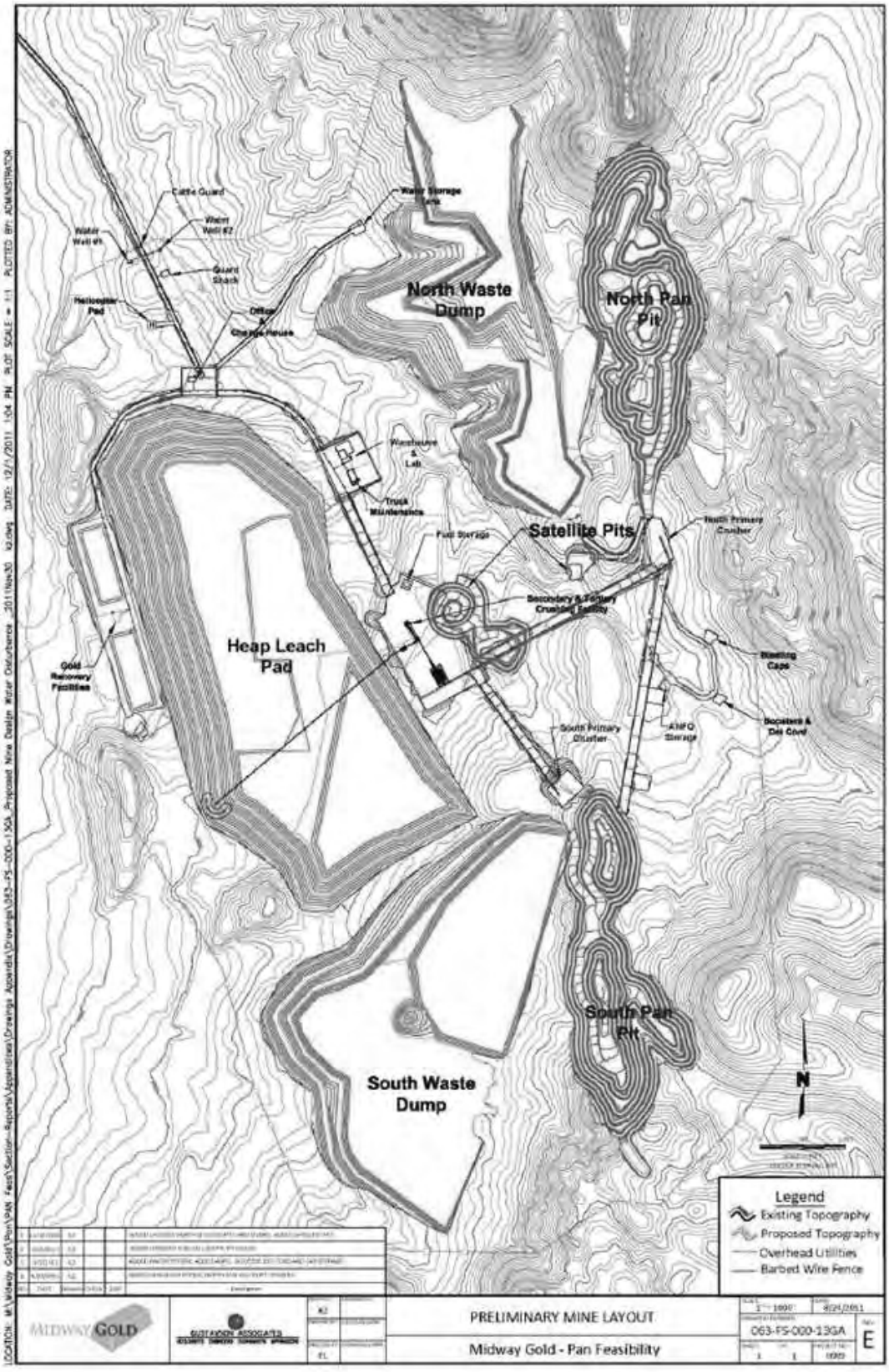

Figure 16-1 General Site Layout

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

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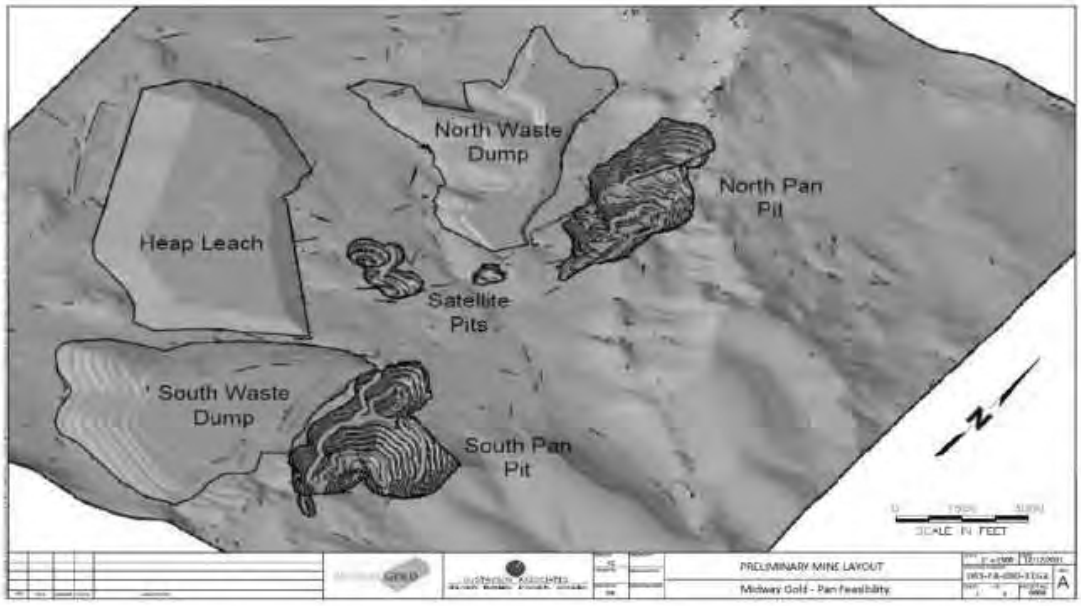

Figure 16-2 Final Pits, Heap and Waste Dumps

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.

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 Conveyor400-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

Feasibility Capital Costs	Estimated Cost
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
Subtotal	**$ 84,187,500**
Contingency	$ 6,765,800
Working Capital	$ 8,214,400
Total Initial Capital	**$ 99,167,700**

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

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

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	**001-33894**	**98-0459178**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(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; (d) no black-out period restricting the sale of Common Shares; (e) the issuance is an exempt purchase pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended; and (f) the number of Series A Preferred Shares subject to the mandatory conversion will be calculated as of the date of the conversion absed 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 Redmption: 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

Exhibit	Description
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

Exhibit	Description
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

EX-99.1 2 ex99_1.htm PRESS RELEASE DATED NOVEMBER 21, 2012

EXHIBIT 99.1

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 20th, 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 13th, 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 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

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	**001-33894**	**98-0459178**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(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.

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

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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.

EX-99.1 3 ex99_1.htm PRESS RELEASE

EXHIBIT 99.1

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 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.

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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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

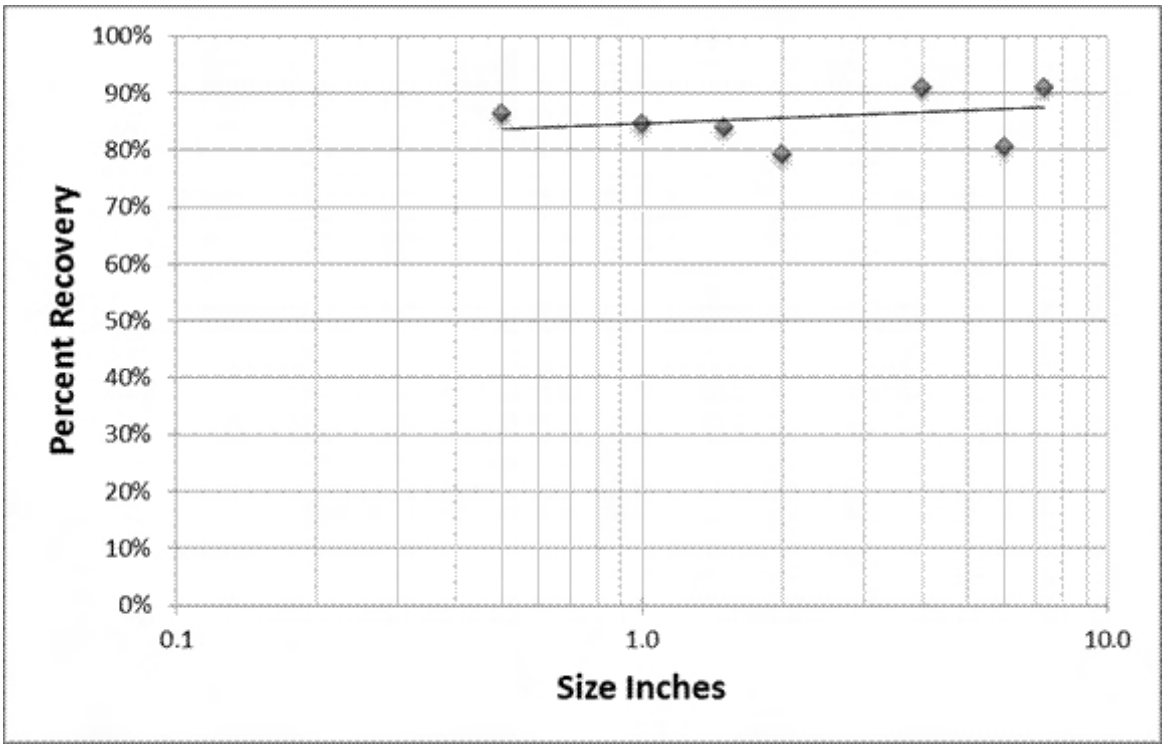
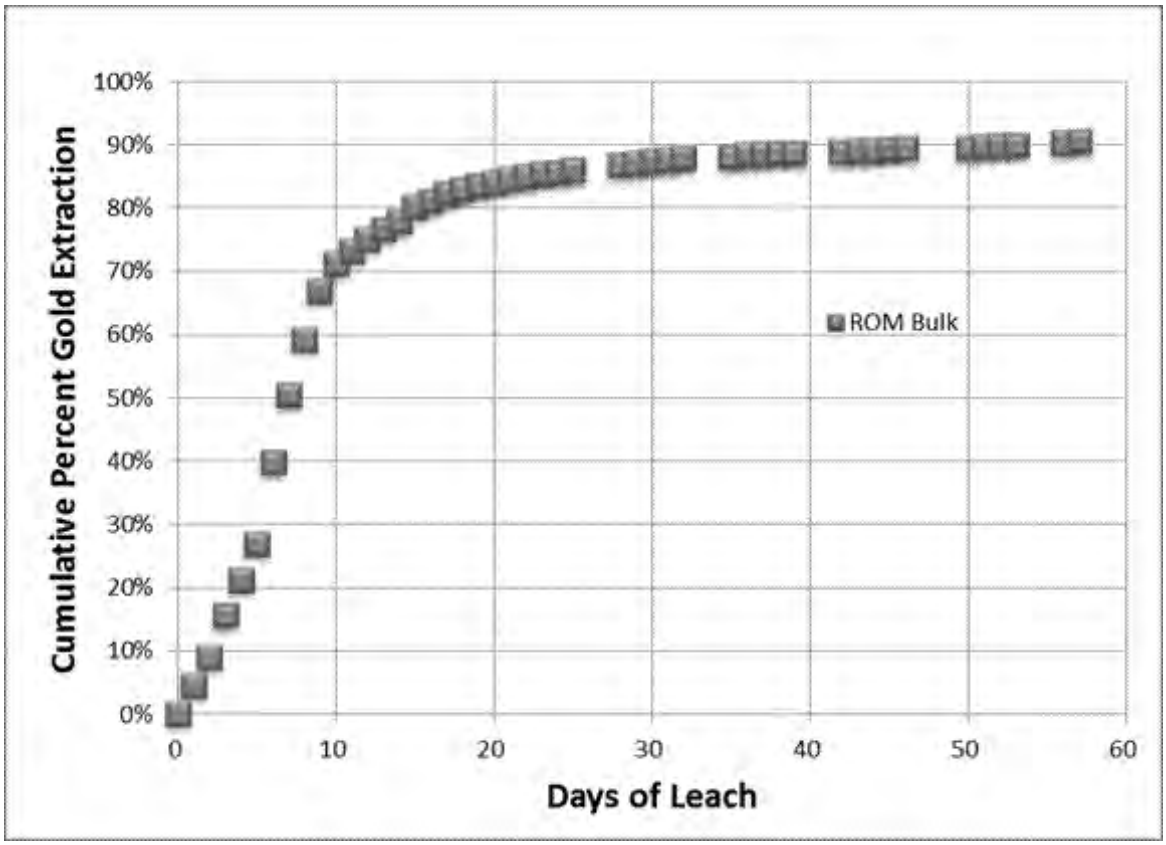


Figure 2. Recovery vs. Leach Cycle in Days



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

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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.)

ON BEHALF OF THE BOARD
"Kenneth A. Brunk"
Kenneth A. Brunk, Chairman, President and CEO

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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

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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

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

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EXHIBIT 10

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

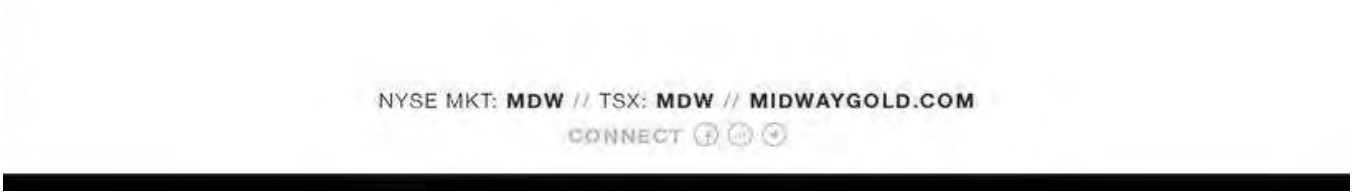
MIDWAY EXECUTES COMMITMENT LETTER FOR US$55 MILLION PROJECT FINANCE FACILITY WITH COMMONWEALTH BANK OF AUSTRALIA PAN PROJECT, NEVADA

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.”



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.

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 or contact Jaime Wells, Investor Relations Analyst, at 720-979-0900.

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. Forward-looking statements are typically identified by words such as: "may", "should", "plan", "believe", "predict", "expect", "anticipate", "intend", "estimate", postulate" and similar expressions or the negative of such expressions or which by their nature refer to future events. 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; changes in interest and currency exchanges rates; local and community impacts and issues; environmental costs and risks; 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. Although the Company believes that such forward-looking statements are reasonable, it can give no assurance that such expectations will prove to be correct. For the reasons set forth above, investors should not attribute undue certainty to or place undue reliance on forward-looking statements.

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 Blacketor, 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

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

Eric B. Liebman
Moye White LLP
16 Market Square 6th Floor
1400 16th Street
Denver CO 80202
Email: 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

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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

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

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

MIDWAY DIRECTORS AND OFFICERS:

KENNETH A. BRUNK

RICHARD SAWCHAK

RICHARD MORITZ

FRANK YU

BRAD BLACKETOR

JOHN SHERIDAN

TIMOTHY HADDON

ROGER NEWELL

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MARTIN HALE	RODNEY KNUTSON
TREY ANDERSON	NATHANIEL KLEIN

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL E. WOLFUS,

Plaintiff,

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; 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

D&O DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT

Defendants Richard D. Moritz ("Moritz"), Bradley J. Blacketor ("Blacketor"), Timothy Haddon ("Haddon"), Richard Sawchak ("Sawchak"), John W. Sheridan ("Sheridan"), Frank Yu ("Yu"), Roger A. Newell ("Newell") and Rodney D. Knutson ("Knutson") (collectively, the

"D&O Defendants"), by and through their attorneys of record, HOLLAND & HART LLP, hereby move this Court to dismiss the *Second Amended Complaint for Damages* filed by Plaintiff Daniel E. Wolfus ("Wolfus" or "Plaintiff") on February 5, 2018 (the "SAC").

This Motion is made pursuant to Rules 12(b)(1), (2) and (5) of the Nevada Rules of Civil Procedure ("NRCP") and is based on the attached Memorandum of Points and Authorities, the *Declarations of Rodney D. Knutson, Bradley J. Blacketor, Richard Sawchak, John W. Sheridan, Timothy Haddon, Roger A. Newell, and Richard D. Moritz*, which are attached hereto as **Exhibits "A"** through **"G,"** respectively, together with the exhibits, the pleadings and papers on file herein, and any oral argument this Court may allow.

DATED this 16th day of March, 2018.

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

Holly Stein Sollod, Esq. *(Admitted Pro Hac Vice)*
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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL:

PLEASE TAKE NOTICE that the foregoing **D&O DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT** will be brought before Department XXVII of the above-entitled Court on the 25th day of April, 2018, at 10:00 a.m./p.m. ~~XXX~~.

DATED this __ day of March, 2018.

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

Holly Stein Sollod, Esq. *(Admitted Pro Hac Vice)*
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF D&O DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT

I.

INTRODUCTION

This is Plaintiff's second attempt to state a claim against the former officers and directors and certain investors in Midway Gold Inc. ("Midway"), a now bankrupt Canadian corporation with its principal place of business in Englewood, Colorado. Plaintiff, a California resident, is the former CEO and Chairman of the Board of Midway. Plaintiff started buying and selling Midway stock in 2008 when he became a director of Midway. Over the years, Plaintiff actively traded Midway stock such that by May 2012, Plaintiff had accumulated 1,629,117 shares of Midway stock at favorable prices. Plaintiff was ousted as the CEO and Chairman in 2013, but continued as a director until June 2013.

Plaintiff seeks to recover the amounts he paid to exercise his expiring stock options on two occasions in 2014 allegedly in reliance upon false statements or omissions in Midway's press releases and SEC filings. Plaintiff also seeks to recover the market value of the stock he and his family owned in February 2014 when Midway's shares traded at their peak. Thus, relying on the false clarity of hindsight, Plaintiff alleges that had he known certain allegedly undisclosed facts, he would not have exercised the stock options in 2014; rather, he would have omnisciently sold all his common stock when Midway's stock reached its peak in February 2014.

On January 5, 2018, this Court entered an order granting *Defendants' Motion to Dismiss the Amended Complaint* without prejudice for lack of subject matter jurisdiction. *See* Order Granting Defendants' Motions to Dismiss Amended Complaint Without Prejudice (filed Jan. 5, 2018) (the "Order"). The Court concluded that Plaintiff's claims, which were premised on harm caused by the reduction in value of shares of stock, were inherently derivative in nature under the Direct Harm test adopted by the Nevada Supreme Court in *Parametric Sound Corp*. The Court further concluded it lacked subject matter jurisdiction because, under the internal affairs doctrine, British Columbia law vests exclusive jurisdiction in the Supreme Court of British Columbia to

adjudicate Plaintiff's derivative claims. Plaintiff fares no better in this, his second bite at the apple, and the SAC should now be dismissed with prejudice.[1]

First, as this Court previously found, it lacks subject matter jurisdiction over Plaintiff's claims for breach of fiduciary duty and aiding and abetting Midway's breach of fiduciary duty. These claims are still inherently derivative in nature under the Direct Harm test adopted by the Nevada Supreme Court in *Parametric Sound Corp*. and British Columbia law vests exclusive jurisdiction in the Supreme Court of British Columbia to adjudicate derivative claims. Accordingly, this Court lacks subject matter jurisdiction over Plaintiff's derivative claims and the claims must be dismissed.

Second, Plaintiff fails to state a primary violation of the California Corporate Securities Act of 1968, which creates a private right of action for a purchaser of a security where the seller engages in a material misrepresentation or omission of fact ***in connection*** with the purchase or sale of said security. Because Plaintiff did not "purchase" a security in 2014 as a matter of law, failed to allege ***any*** defendant made a statement directly to Plaintiff, let alone a false statement, and failed to allege ***any*** defendant actually sold securities to Plaintiff, the SAC fails to state a primary violation of the Act and the California state securities claim must be dismissed.

Next, the Court should dismiss with prejudice Plaintiff's so-called "holder claims" under California law for common law fraud and negligent misrepresentation because (1) California law does not apply to a publicly-traded Canadian corporation; (2) even if California law applied, claims arising out of the exercise of stock options are not "holder claims"; (3) Plaintiff fails to allege reliance and causation with the particularity required for asserting holder claims; and (4) Plaintiff fails to plead scienter with the required specificity under Rule 9(b).

Lastly, the D&O Defendants are not subject to personal jurisdiction in Nevada. The D&O Defendants are not subject to general jurisdiction because, with one exception, they do not reside,

[1] The SAC alleges five causes of action: (1) a claim for violation of California's Corporate Securities Act of 1968, California Corporations Code § 25000, *et seq.*; (2) a claim for California common law breach of fiduciary duty; (3) a claim for California common law aiding and abetting Midway's breach of fiduciary duty; (4) a claim for California common law fraud; and (5) a claim for California common law negligent misrepresentation. A redlined version of the SAC is attached hereto as **Exhibit "H"** for the Court's convenience.

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much less domicile, in Nevada and their contacts with Nevada certainly do not render them at "home" in this forum. Furthermore, Plaintiff's claims arise out of his purported reliance upon alleged material omissions contained in Midway's SEC filings and press releases, which were drafted in and issued from the state of Colorado and communicated to the investing public. Because the claims asserted in this lawsuit do not arise from the D&O Defendants' purported contacts with the state of Nevada, this Court cannot exercise specific jurisdiction over them.

II.

FACTUAL BACKGROUND[2]

A. The Parties.

Non-party Midway Gold Corp. ("Midway") was a publicly traded Canadian Corporation incorporated under the Company Act of British Columbia[3] with its principal executive offices located in Englewood, Colorado.[4] SAC ¶ 23. Midway was engaged in the business of exploring and mining gold, primarily from mines located in Nevada and Washington. *Id.* ¶ 30. Midway filed for Chapter 11 bankruptcy on June 22, 2015. SAC ¶ 95.

Plaintiff, currently a California resident, became an outside director of Midway in November 2008. SAC ¶¶ 7, 26. In 2009, Plaintiff became Chairman of the Board and the Chief Executive Officer of Midway, serving in both capacities until May 18, 2012 when he was replaced by Defendant Kenneth Brunk. *Id.* ¶ 27.

Plaintiff began purchasing common stock of Midway in the open market in February 2008. SAC ¶ 29. Plaintiff also acquired Midway stock option grants pursuant to an employee stock option plan on January 7 and September 10, 2009. *See* SEC Form 4 for January 7 and September

[2] For the purposes of this motion only, the factual allegations are taken as true as they are stated in the Second Amended Complaint. The D&O Defendants do not admit to any of the allegations by this Motion and reserve the right to challenge any of the allegations at any further stage of this litigation.

[3] The Business Corporations Act of British Columbia ("BCA") replaced the former Company Act of British Columbia on March 29, 2004.

[4] Plaintiff has not brought any claims or lawsuits arising out of the same set of facts against Midway or the D&O Defendants in the provincial courts of British Columbia, the place of Midway's incorporation.

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10, 2009, attached hereto as **Exhibits "I"** and **"J,"** respectively.[5] As of May 1, 2012, Plaintiff and his family owned over 1,629,117 shares of Midway common stock. SAC ¶ 29.[6]

B. The 2011 Pan Mine Feasibility Study.

At the time Plaintiff became Chairman of the Board and CEO, Midway had properties in the exploratory stage where gold mineralization had been identified. SAC ¶ 30. One of these properties was the Pan Mine property located at the northern end of the Pancake mountain range in Western Pine County, Nevada. *Id.* ¶ 32. Prior to May 2010, Midway decided to convert from a purely exploration company into a gold mining production company using the Pan Mine project as its initial production mine. *Id.* ¶ 35.

In November 2011, when Plaintiff was still Midway's Chairman and CEO, Midway reported by press release filed with the SEC the results of a feasibility study for the Pan Project prepared by an independent contractor, Gustavson Associates (the "2011 Pan Mine Feasibility Study"). SAC ¶ 44 and SAC Ex. 1 at 9. On December 20, 2011, Midway filed the 2011 Pan Mine Feasibility Study with the SEC. SAC ¶ 45. The 2011 Pan Mine Feasibility Study is attached as Exhibit 1 to the SAC.

In 2012, Plaintiff claims that as CEO and Chairman of the Board of Midway, he was primarily involved in securing capital for Midway to fund its operations. SAC ¶ 49. When Hale Capital Partners LP offered to secure a $70 million private placement of preferred stock, Plaintiff purportedly opposed the transaction proposed by Hale, while Brunk was an ardent supporter. *Id.*

On May 18, 2012, Midway's Board of Directors voted to terminate Plaintiff as its Chairman and CEO and replaced him with Brunk. SAC ¶ 50. Plaintiff, however, continued to serve as a director until June 2013, continued to receive board packages consisting of all information provided to all directors for Board meetings, and participated in the Board meetings until his departure in June 2013. *Id.*

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[5] D&O Defendants request that the Court take judicial notice of the SEC Forms 4. NRS 47.130; *In re MGM Mirage Sec. Litig.*, 2:09-CV-01558-GMN, 2013 WL 5435832, at *4 (D. Nev. Sept. 26, 2013) (citing *In re Amgen Inc. Sec. Litig.*, 544 F. Supp. 2d 1009, 1023-24 (C.D. Cal. 2008)) (observing that the court may take judicial notice of SEC filings).

[6] As of December 23, 2014, and after the sale of some shares (at a profit), the combined shareholdings of Wolfus and/or his assignors were 2,402,251 shares of Midway common stock.

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C. Midway's Alleged Misrepresentations and Omissions.

Plaintiff claims that, by December 13, 2013, Midway's management and its Board (including the D&O Defendants) knew the Pan Mine was being built and operated in ways that were materially different from those assumed in the Pan Mine 2011 Study, but the Defendants did not inform investors of the material impact on cash flows as a result of those differences. SAC ¶ 65. Plaintiff generally alleges that "from and after May 18, 2012, Wolfus carefully read and considered all press releases by Midway and the public filings made by Wolfus usually within a day or two following their release" in order to decide whether to purchase additional shares or sell his shares. *Id.* ¶¶ 50, 66, 87, 129, 130, 131. Plaintiff alleges that he was primarily concerned with the status of the Pan project and the likelihood that this project would being profitably mining gold and be revenue positive. *Id.* Plaintiff claims he determined from those public statements and the absence of the 2013 Undisclosed Facts[7] and 2014 Undisclosed Facts[8] that profitable mining operations would result in a substantial increase in the value of his Midway shares. *Id.* ¶¶ 129-136. The SAC does not contain any allegations about any particular public statements after December 1, 2014 until the announcement that it was filing for bankruptcy on June 22, 2015.

D. Plaintiff's Exercise of Stock Options in January and September 2014.

In late December 2013 and in early January 2014, Plaintiff alleges he "needed to decide whether to exercise some of his Midway stock options which would soon be expiring." SAC ¶ 66. Plaintiff alleges that "in order to make this investment decision, Wolfus carefully reviewed

[7] Plaintiff alleges that Defendants failed to disclose that (1) Midway was unable to raise sufficient cash to complete the Pan Mine project in the manner set forth in the 2011 Pan Mine Feasibility Study, as well as fund on-going operations until the Pan Mine project produced sufficient revenues to cover these expenses; (2) the Hale Defendants blocked any consideration of the sale of Midway's material assets to generate additional revenue; (3) Midway did not seek the proper permits and did not have the necessary facilities to process the gold solution once leaching was completed; and (4) there would be a considerable delay before the facilities were constructed and permitted for operations. SAC ¶ 65.

[8] Plaintiff alleges Defendants failed to disclose that Midway (1) had a mining contractor poised to begin loading ore directly on the leach pads at the Pan Mine despite Midway not having a qualified person on site to supervise the loading; (2) did not have the permits authorizing it to deviate from the 2011 Pan Mine Feasibility Study; and (3) did not have the necessary facilities to process the gold solutions once leaching had been completed. SAC ¶ 86.

and considered Midway's press releases and public filings, primarily those that were issued after he ceased to be Midway's Chief Executive Officer."[9] *Id.*

The only stock purchase alleged to have been made by Plaintiff in 2014 was the ***exercise of stock options*** granted to Plaintiff pursuant to an employee stock option plan on January 7 and September 10, 2009. SAC ¶¶ 29, 66, 69, 87; Exs. I and J, respectively. On January 23, 2014, Plaintiff exercised stock options by purchasing 200,000 shares at $0.56/share for $112,000 Canadian Dollars ($100,636 USD). SAC ¶ 102. At that time, Midway's common stock was selling at $1.27 US dollars per share and its price was rising. *Id.*

Plaintiff claims that following his exercise of stock options on January 23, 2014, "thereafter and on a daily basis checked the market price of Midway's stock." SAC ¶ 70. He further contends that when Midway's stock reached a high on February 14, 2014, of $1.39, he decided to continue to hold his shares. *Id.* The SAC also alleges that, at the time he made this decision to exercise his expiring options and not to sell his shares, he was unaware of the 2013 Undisclosed Facts or that the Pan Mine project was not fully permitted and that, had he known, he and his family members would have sold all of the Midway shares at that time. *Id*. ¶¶ 70, 106, 111, 117.

In late August and early September 2014, Plaintiff alleges that he again "needed to decide whether or not to exercise some of his options which would soon be expiring." SAC ¶ 87. Plaintiff claims to have reviewed the press releases and SEC filings "primarily those that were issued after he purchased shares in January 2014."[10] *Id*.

On September 5, 2014, Plaintiff contends he notified Midway, once again, of his intent to ***exercise some of the stock options*** granted to him in 2009 pursuant to Midway's stock option plan. SAC ¶ 87; Ex. J.[11] On September 19, 2014, Plaintiff consummated his stock option exercise

[9] Notably, the SAC does not specify which press releases or SEC filings Plaintiff reviewed at that time. Nor does Plaintiff point to any specific misrepresentation contained in the filings upon which he purportedly relied.

[10] Notably, the SAC does not specify which press releases or SEC filings Plaintiff reviewed at that time. Nor does Plaintiff point to any specific misrepresentation contained in the filings upon which he purportedly relied.

[11] *See supra* n.5.

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by purchasing 1,000,000 shares directly from Midway at a purchase price of $0.86/share for $860,000 Canadian Dollars ($783,778 USD). *Id.* ¶¶ 89, 107.[12]

E. The Midway Bankruptcy.

The SAC generally alleges that from mid-September 2014 until the announcement of the voluntary petition for bankruptcy on June 22, 2015, Midway's press releases and SEC filings provided only favorable information concerning the Pan Mine project. SAC ¶¶ 90-94. As a result of the Midway Bankruptcy, all or virtually all of Midway's assets have been sold and there are no funds or recoveries by any common shareholders of Midway. Thus, the value of any common stock held by any Midway shareholder, once Midway filed bankruptcy, became worthless. *Id.* ¶ 96.

III.

LEGAL ARGUMENT

A. Plaintiff's Breach of Fiduciary Duty and Aiding and Abetting Breach of Fiduciary Duty Claims Are Derivative and Governed by British Columbian Law and Must Be Dismissed For Lack of Subject Matter Jurisdiction

Plaintiff's claims for breach of fiduciary duty (Count II) and aiding and abetting breach of fiduciary duty (Count III) are derivative claims related to the D&O Defendants' internal management of Midway, a Canadian corporation. As a result, the internal affairs doctrine requires this Court to apply the law of the jurisdiction where the corporation was incorporated (here, British Columbia, Canada), to determine whether it has subject matter jurisdiction to hear the claims. The Business Corporations Act ("BCA"), which governs British Columbia corporations such as Midway, provides that the Supreme Court of British Columbia has exclusive jurisdiction over derivative claims involving British Columbia corporations. Accordingly, this Court has no subject matter jurisdiction over Plaintiff's derivative claims contained in Counts II and III and must dismiss the same.

[12] At the time of this exercise, Midway's common stock was trading at US$1.01.

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1. Legal Standard on a Rule 12(b)(1) Motion

Rule 12(b)(1) 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). The burden of proving subject matter jurisdiction lies with the party asserting subject matter jurisdiction, the plaintiff or petitioner in an action. *Id.* 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).

2. Nevada Recognizes the Internal Affairs Doctrine

The Nevada Supreme Court has held that the "most significant relationship test governs choice of law issues in tort actions unless another, more specific section of the Second Restatement applies to the particular tort." *Gen. Motors Corp. v. Eighth Judicial Dist. Court*, 122 Nev. 466, 134 P.3d 111, 116 (2006) (emphasis added). With regard to claims of breach of fiduciary duty, fraud and negligence by the directors or officers of a corporation, there is a more specific section that applies, namely, section 309. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 309 (1971). Section 309 states that, in general, "the local law of the state of incorporation will be applied to determine the existence and extent of a director's or officer's liability to the corporation, its creditors and shareholders . . . ." *Id.* This rule embodies the widely accepted choice-of-law principle often referred to as the "internal affairs doctrine."[13] The internal affairs doctrine is well established and generally followed throughout this country, including in Nevada.[14]

[13] *See, e.g., Atherton v. FDIC*, 519 U.S. 213, 224 (1997); *see also Batchelder v. Kawamoto*, 147 F.3d 915, 920 (9th Cir. 1998) (noting that, under the internal affairs doctrine, "the rights of shareholders in a foreign company, including the right to sue derivatively, are determined by the law of the place where the company is incorporated"); *Vaughn v. LJ Int'l, Inc.*, 94 Cal. Rptr. 3d 166, 225 (Cal. Ct. App. 2009) (applying internal affairs doctrine in concluding that the British Virgin Islands Business Companies Act governed appellant's standing to bring his derivative claims against British Virgin Islands corporation and its directors in California).

[14] *See, e.g., 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); *see also Dictor v. Creative Mgmt. Servs., LLC.*, 223 P.3d 332, 335 (Nev. 2010) (noting that Nevada has adopted the RESTATEMENT (SECOND) OF CONFLICT OF LAWS as the relevant authority for its choice-of-law

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Because Midway is a British Columbian corporation, Plaintiff's common law claims for breach of fiduciary duty and aiding and abetting breach of fiduciary duty are governed by Canadian law. As such, the Court must dismiss these inherently derivative claims because it lacks subject matter jurisdiction.

a. The BCA Vests Exclusive Jurisdiction in the Supreme Court of British Columbia to Adjudicate Plaintiff's Derivative Claims.

This Court lacks subject matter jurisdiction to hear Plaintiff's derivative claims because exclusive jurisdiction is vested in the Supreme Court of British Columbia pursuant to Canadian law. Specifically, Plaintiff's derivative claims fail to satisfy two separate and necessary preconditions for bringing an action on behalf of a British Columbian corporation: (1) providing notice to the directors prior to initiating the action; and (2) obtaining judicial permission from the Supreme Court of British Columbia to bring the derivative action prior to filing suit.[15] *See* BCA §§ 232 & 233.

For derivative claims involving corporations that are incorporated in British Columbia, the BCA requires the shareholder complainant to obtain leave of the Supreme Court of British Columbia[16] prior to asserting derivative claims against the company's directors. *See* BCA § 232(2). The Supreme Court of British Columbia may grant the complainant leave to assert the derivative claims if, among other things, notice of the application for leave has been provided to the company. *See* BCA § 233(1). In other words, a mandatory precondition to bringing a derivative suit under the BCA is to apply for and obtain leave of the Supreme Court of British Columbia to do so. Failure to comply requires dismissal of the action. United States courts, including the District of Nevada and the Ninth Circuit, have similarly recognized they lack jurisdiction to hear shareholder claims against Canadian corporations and their directors. *E.g.*,

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jurisprudence in tort cases); *see also Hausman v. Buckley*, 299 F.2d 696, 702 (2d Cir. 1962) (internal affairs doctrine "is well established and generally followed throughout this country").

[15] As set forth above, the internal affairs doctrine requires this Court to look to Canadian law. For the avoidance of doubt, the D&O Defendants hereby provide notice of their intent to raise an issue concerning the law of a foreign country, Canada, pursuant to NRCP 44.1.

[16] The BCA states that derivative proceedings must be heard by "the court," which is defined as "the Supreme Court." BCA § 1(1). The B.C. Interpretation Act clarifies that the term "Supreme Court" refers only to the "Supreme Court of British Columbia." B.C. Interpretation Act, R.S.B.C. (1996), chapter 238 § 29.

Fagin v. Doby George, LLC, 525 Fed. App'x 618 (9th Cir. May 31, 2013) (affirming dismissal from the District of Nevada for lack of subject matter jurisdiction).[17]

Here, Plaintiff failed to make application to and has not obtained leave from the Supreme Court of British Columbia to bring a derivative action on behalf of Midway. Because British Columbia law applies to Plaintiff's claims, and because Sections 232 and 233 of the BCA requires Plaintiff to seek leave of the Supreme Court of British Columbia prior to bringing derivative claims this Court cannot properly exercise jurisdiction over Plaintiff's derivative claims and they must be dismissed.[18]

b. Plaintiff's Fiduciary Duty Claims are Derivative Under the Direct Harm Test.

Plaintiff asserts claims for breach of fiduciary duty and aiding and abetting Midway's breach of fiduciary duty against the D&O Defendants arising out their purported failure to disclose certain facts regarding the progress (or lack thereof) of the Pan Mine project prior to Plaintiff's stock option exercises in 2014. SAC ¶¶ 114, 115. Plaintiff's breach of fiduciary duty claims, as repleaded in the SAC, are still derivative under the Direct Harm test adopted by the Nevada Supreme Court in *Parametric Sound Corp. v. Eighth Judicial Dist. Court,* 133 Nev. Adv. Op. 59, 401 P.3d 1100 (2017) ("Parametric").

Plaintiff goes to great lengths in the SAC to insist that none of his claims are brought derivatively on behalf of Midway. *See* SAC ¶¶ 2, 3, 4, 5, 6, 114. But Plaintiff's failure to label his claims "derivative" is of no moment. The Court may not simply accept a plaintiff's conclusory allegation of direct harm. *See, e.g., Feldman v. Cutaia, ("Feldman I")* 956 A.2d 644, 659-60

[17] *See also Taylor v. LSI Logic Corp*., 715 A.2d 837 (Del. 1998), *overruled on other grounds by Martinez v. E.I. DuPont de Nemours & Co., Inc.*, 86 A.3d 1102, 1112 n. 42 (Del. 2014); *Locals 302 & 612 of Int'l Union of Operating Engineers - Employers Const. Indus. Ret. Tr. v. Blanchard*, 04 CIV. 5954 (LAP), 2005 WL 2063852 (S.D.N.Y. Aug. 25, 2005); *Hollinger Int'l, Inc. v. Hollinger Inc.,* 2007 WL 1029089, *10 (N.D. Ill. Mar. 29, 2007) (denying motion to amend complaint as futile because plaintiff "has not adequately explained why this Court has jurisdiction to hear its rescission claims premised on the [Canada Business Corporations Act], when the CBCA itself provides that those claims must be heard only in certain enumerated Canadian courts").

[18] Alternatively, the Ninth Circuit has found when dealing with similar issues of exclusive jurisdiction rendered under the analogous Alberta (Canada) Business Corporations Act, derivative claims must be dismissed for failure to state a claim. *Seismic Reservoir 2020, Inc. v. Paulsson*, 785 F.3d 330, 335-36 (9th Cir. 2015). Under either scenario, pursuant to NRCP 12(b)(1) for lack of subject matter jurisdiction or NRCP 12(b)(5) for failure to state a claim, Plaintiff's derivative claims do not survive a motion to dismiss. *See infra* Section III(B).

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(Del. Ch. 2007), *aff'd* ("Feldman II") 951 A.2d 727, 733 (Del. 2008) (recasting a derivative claim as direct is "disfavored by Delaware courts"). Courts determining whether a claim is direct or derivative must "look to the body of the complaint, not to the plaintiff's designation or stated intention." *Id.*; *see also Sweeney v. Harbin Elec., Inc.*, No. 3:10-cv-00685-RCJ-VPC, 2011 WL 3236114, **2-3 (D. Nev. July 27, 2011).

Despite Plaintiff's attempt to replead his claims, the SAC still alleges diminution in value of Plaintiff's stock holdings as a result of the Defendants' purported concealment of corporate mismanagement, which diminution would have been suffered by every other Midway shareholder. It is undisputed that a diminution in stock value is an injury that does not give a stockholder standing to sue on his own behalf.[19] In such a case, the wrong is "entirely derivative, since [a]ny devaluation of stock is shared collectively by all the shareholders, rather than independently by the plaintiff or any other individual shareholder." *Lee v. Marsh & McLennan Companies, Inc.*, 17 Misc. 3d 1138(A), 856 N.Y.S.2d 24, 2007 WL 4303514 (N.Y. Sup. Ct. 2007);[20] *see also In re Amerco Derivative Litig.*, 127 Nev. 196, 226, 252 P.3d 681, 702 (2011) (shareholders in derivative action alleged that Board's actions prevented corporation from "realizing the amount of profit it would have obtained" causing the company ***and*** shareholders to suffer harm).

In *Parametric*, the Nevada Supreme Court concluded that, to distinguish between direct and derivative claims, Nevada "courts should consider only '(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?'" 401 P.3d

[19] *See Manzo v. Rite Aid Corp.*, 28 Del. J. Corp. L. 819, 2002 WL 31926606, at *6 (Del.Ch. Dec. 19, 2002) (to "the extent that plaintiff was deprived of accurate information upon which to base investment decisions, and as a result, received a poor rate of return on her Rite Aid shares, she experienced an injury suffered by all Rite Aid shareholders in proportion to their pro rata share ownership," this would give rise to a derivative claim.); *In re Imaging3, Inc.*, 634 F. App'x 172, 175 (9th Cir. 2015) ("The claims in Vuksich's state court litigation [for stock loss] do not allege that Vuksich suffered an injury distinct from that suffered by other shareholders, and none of his claims would allow him to recover any damages directly.").

[20] Canadian law on these issues is analogous. *See, e.g.*, *Goldex Mines Ltd. v. Revill*, [1974] O.J. No. 2245 (finding that a personal or direct action is one "not arising simply because the corporation itself has been damaged, and as a consequence of the damage to it, its shareholders have been injured."); *Burt v. McLaughlan*, [1992] A.J. No. 841 (noting the "clear acceptance" in Canadian law that "an action by a shareholder to recover for the decrease in the value of his shares is a derivative action rather than a personal action").

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at 1107-08 (quoting *Tooley v. Donaldson, Lufkin, & Jenrette, Inc.*, 845 A.2d. 1031, 1033 (Del. 2004)). The Direct Harm test does not permit Plaintiff to personally and directly recover for the diminution in value caused by purported corporate mismanagement. The Direct Harm test provides that such claims can only be asserted derivatively.[21] Just as the Court correctly concluded with regard to the allegations in Plaintiff's prior complaint, Plaintiff's allegations in Counts II and III of the SAC describe classic injury inflicted on the corporation and identifies losses common to all Midway shareholders who held Midway stock at the time of its bankruptcy filing.[22] *See* Order at ¶ 37. Nothing has changed. In the SAC, Plaintiff still seeks a recovery for injuries to the corporation, which resulted in the loss of the market value of his stock. Accordingly, the Plaintiff's fiduciary duty claims are derivative and should be dismissed for lack of standing.

Finally, it would be an unfair result if Plaintiff, a former corporate insider, is permitted to maintain a direct action to circumvent the predicate shareholder derivative suit procedural requirements of Rule 23.1 to recover his investment in Midway. *See generally* A.L.I., PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS, § 7.01 (1992). In addition, disguising derivative claims as direct is a particularly appealing strategy to those plaintiffs who seek to circumvent the recovery priorities of corporate creditors established in the bankruptcy code.[23]

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[21] *See Manzo v. Rite Aid Corp.*, 28 Del. J. Corp. L. 819, 2002 WL 31926606, at *6 (Del. Ch. Dec. 19, 2002) (to "the extent that plaintiff was deprived of accurate information upon which to base investment decisions, and as a result, received a poor rate of return on her Rite Aid shares, she experienced an injury suffered by all Rite Aid shareholders in proportion to their pro rata share ownership," this would give rise to a derivative claim.); *In re Imaging3, Inc.*, 634 F. App'x 172, 175 (9th Cir. 2015) ("The claims in Vuksich's state court litigation [for stock loss] do not allege that Vuksich suffered an injury distinct from that suffered by other shareholders, and none of his claims would allow him to recover any damages directly.").

[22] *See Rivers v. Wachovia Corp*, 665 F.3d 610 (4th Cir. 2011) (citing *Kagan v. Edison Bros. Stores, Inc.*, 907 F.2d 690, 692 (7th Cir. 1990) ("[T]he nub of the problem is that the investors' injury flows not from what happened to them ... but from what happened to [the company]."); *Capital Z Financial Services Fund II, L.P. v. Health Net, Inc.*, 43 A.D.3d 100, 109, 840 N.Y.S.2d 16, 23 (1st Dep't 2007) (plaintiffs' allegation of loss of entire amount invested in stock to finance corporation's purchase of another corporation stated derivative not direct claim because plaintiff's claim would require showing that corporation in which they invested went bankrupt, making their loss only incidental to the "financial ruin" stemming from acquisition).

[23] *See Kagan v. Edison Bros. Stores, Inc.*, 907 F.2d 690, 692 (7th Cir. 1990) (noting that direct recovery improperly circumvents creditors in bankruptcy proceedings); *Mid–State Fertilizer Co. v. Exchange National Bank*, 877 F.2d 1333, 1335–37 (7th Cir. 1989) (same). Even irrespective of the bankruptcy context, allowing direct recovery when the action is properly a derivative one fails to protect corporate creditors because the proceeds avoid the legal ordering of creditors and investors. *See Kagan*, 907 F.2d at 692. ("Recovery by the corporation ensures that all of the

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B. Plaintiff Fails to State a Claim for Relief Under California Securities Law.

The Complaint fails to state a violation of the California Corporate Securities Act of 1968 for at least three reasons. First, Plaintiff cannot allege that the 2013 or 2014 Undisclosed Facts were made ***in connection*** with the "purchase or sale" of a security because the exercise of Plaintiff's stock options are deemed to be "a purchase or sale" ***when the options were granted in 2009***, not when they were exercised in 2014. Second, Plaintiff also fails to allege any misrepresentations by the D&O Defendants with the requisite specificity. Third, because none of the D&O Defendants sold Midway stock to Plaintiff, he cannot show he was in privity with any of the D&O Defendants, as required by the California statute.

1. Legal Standard on a Rule 12(b)(5) Motion.

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

2. Plaintiff Fails to Allege Any Misrepresentation "In Connection with a Purchase or Sale of a Security."

a. No Purchase or Sale Occurred in 2014.

Plaintiff's California securities fraud claim fails as a matter of law because he did not purchase or sell a security in 2014 ***in connection*** with the 2013 or 2014 Undisclosed Facts. A claim for securities fraud in California requires a plaintiff to show that the "defendant engaged in

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participants—stockholders, trade creditors, employees and others—recover according to their contractual and statutory priorities.")

a material misrepresentation or omission of fact, with scienter, ***in connection*** with the purchase or sale of a security, and economic loss." CAL. CORP. CODE §§ 25401, 25501 (emphasis added); *Mueller v. San Diego Entm't Partners, LLC*, No. 16CV2997-GPC(NLS), 2017 WL 2230161, at *8–9 (S.D. Cal. May 22, 2017); *see also California Amplifier, Inc. v. RLI Ins. Co.*, 94 Cal. App. 4th 102, 108-109 (2001). However, ***purchases and sales are deemed to occur at the time stock options are granted, not at the time options are exercised***. CAL. CORP. CODE § 25017(e). Because Plaintiff acquired his stock options in 2009 (*see* Exs. I and J) (when he was Chairman of the Board and Chief Executive Officer of Midway) and there are no allegations of any misrepresentations or omissions made by Defendants in 2009, Plaintiff fails to state a claim upon which relief can be granted.

b. Plaintiff Fails to Allege a False Statement or Omission by Any of the D&O Defendants.

Even if Plaintiff had purchased shares of Midway stock in 2014, the SAC would fail to state a claim for relief because he fails to allege that any of the D&O Defendants made a false statement or omission either to him or to the investing public. Rather, the SAC makes overly broad generalizations that "defendants caused Midway to make material misstatements of fact" in public filings and press releases, which were purportedly relied upon by him, caused him to exercise his options and caused him to hold and not sell his Midway common stock. *See* SAC ¶¶ 1, 66, 87.

Again, a claim for securities fraud under California law requires that a plaintiff show that the "***defendant*** engaged in a material misrepresentation or omission of fact, with scienter, in connection with the purchase or sale of a security, and economic loss." CAL. CORP. CODE §§ 25401, 25501 (emphasis added). Plaintiff makes conclusory allegations that two overlapping D&O Defendant groups, called the "2013 Control Defendants" and the "2014 Control Defendants," knew the "[2013 and/or 2014] Undisclosed Facts and knew that none of those facts had been disclosed to the public generally or to Wolfus." SAC ¶¶ 64, 65, 85, 86.

The SAC is fatally flawed, however, in that it does not contain ***any*** statements made by the D&O Defendants. Rather, the SAC alleges—without any factual support—that all the

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Defendants "knew each of the following facts [identified as either "2013 Undisclosed Facts" or "2014 Undisclosed Facts"] to be true, knew that each of the following facts would be material to any reasonable investor in Midway, including Wolfus and knew that none of those facts had been disclosed to the public generally or to Wolfus."[24] *See* SAC ¶¶ 65, 86. But even liberally construing the allegations, the SAC does not adequately allege who made false or misleading statements—and even those allegations do not plead facts showing why the statements were false at the time they were made. Moreover, the SAC does not allege facts showing knowledge by the speaker of the falsity when those statements were supposedly made.

Relying on a fraud by hindsight theory, however, Plaintiff alleges that he did not learn of these Undisclosed Facts until after Midway filed bankruptcy in June 2015. But there is simply no factual support for Plaintiff's allegations that any of the D&O Defendants knew about the Undisclosed Facts during their tenure at Midway. Without a specific misrepresentation by a specifically identified defendant, Plaintiff's claim for violations of the California securities statute must fail. *Goodman v. Kennedy*, 18 Cal. 3d 335, 346 (1976) (dismissing case because plaintiff failed to allege that defendant made an untrue statement of material fact or omitted a material fact).[25] For each of these reasons, Plaintiff fails to state a claim for statutory securities fraud.

c. The California Securities Act Requires Privity, But the D&O Defendants Are Not Sellers of Securities.

Plaintiff's California Securities Act claim fails for the additional reason that he does not and cannot allege facts showing that he was in privity with any of the Defendants—which is required for a Section 25501 claim. Sections 25401 and 25501 impose liability only on the "actual seller" of the security. *Apollo Capital Fund, LLC v. Roth Capital Partners, LLC,* 158 Cal. App. 4th 226, 253-54, 70 Cal. Rptr. 3d 199 (2007). In other words, there must be privity between plaintiff and defendant—*i.e.*, defendant must have been the party who actually sold the security

[24] Further piling inference on top of inference, the SAC alleges that "Wolfus is informed and believes and thereon alleges that defendants and each of them were aware of this exercise." SAC ¶ 87.

[25] Moreover, Plaintiff's allegations fail to allege with any particularity the specific content of the misrepresentations made by each Defendant to Plaintiff. Rule 9(b) "require[s] plaintiffs to differentiate their allegations when suing more than one defendant . .. and inform each defendant separately of the allegations surrounding his alleged participation in the fraud." *Swartz v. KPMG LLP*, 476 F.3d 756, 764-65 (9th Cir.2007).

to (or purchased the security from) plaintiff. *See Apollo*, 158 Cal. App. 4th at 252-54, 70 Cal. Rptr. 3d 199.

Plaintiff does not (and cannot) allege that he purchased any shares of Midway stock from any Defendant. Rather, the Complaint clearly alleges that purchases were made directly from Midway. SAC ¶¶ 100, 102, 103 ("Wolfus purchased in California 200,000 shares of Midway's common stock ***directly from Midway***." "***Midway was the issuer*** of the shares purchased by Wolfus.") (emphasis added). Therefore, the D&O Defendants cannot be civilly liable for a violation of Section 25401. *California Amplifier,* 94 Cal. App. 4th at 109, 113 Cal. Rptr. 2d 915 (stating that § 25501 "retain[s] the privity requirement from common law fraud").

Nor can Plaintiff maintain a cause of action against the D&O Defendants as joint and several tortfeasors or control persons of Midway under Sections 25403 or 25504. The California Act imposes joint and several liability on persons who "directly or indirectly" control primary violators of California's securities laws or broker-dealers or agents who materially aid a primary violation. CAL. CORP. CODE §§ 25403, 25504. To state a claim for control person liability, Plaintiff must plead particularized facts establishing a primary violation of Sections 25401 and 25501. *In re Alliance Equipment Lease Program Sec. Litig.*, 2002 WL 34451621, *11 (S.D. Cal. Oct. 15, 2002) ("Section 25504 requires a primary violation of 25501."). Plaintiff's claims against the "2013 and 2014 Control Defendants" are based on the exercise of stock options in Midway stock, ***which were granted in 2009***. Because Plaintiff does not allege violations of Section 25501, he cannot state a claim for secondary liability under Sections 25403 or 25504.

Furthermore, Plaintiff failed to plead facts sufficient to support an inference that the D&O Defendants controlled or materially aided and abetted a primary violator under Section 25504. *See Weiss v. NNN Capital Fund I*, LLC, 2015 WL 11995251 (S.D. Cal. June 11, 2015). In the absence of a viable claim of primary liability against Midway, Plaintiff cannot state a claim against the D&O Defendants for control person liability under § 25504—particularly given that the claims against the D&O Defendants are based solely on statements by Midway, which Plaintiff has not shown to have been false or misleading when made.

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C. Plaintiff's Holder Claims for Common Law Fraud and Negligent Misrepresentation Fail to State A Claim

The SAC asserts claims for common law fraud and negligent misrepresentation committed by non-party Midway and each of the Defendants for inducing Plaintiff to exercise his stock options in January 2014 and September 2014 and inducing Plaintiff and his assignors, to hold and not sell all their shares in February 2014. *See* SAC ¶¶ 127-138. Claims that are based upon a party who alleges it was induced to hold onto stock, as opposed to sell stock, are commonly referred to as "holder" claims. Thus, Plaintiff attempts to avoid the purchase or sale requirements of his securities fraud claims by seeking to assert holder claims.

The vast majority of jurisdictions in the United States have categorically rejected holder claims. *See, e.g., Tradex Global Master Fund SPC, Ltd v. Titan Capital Group III, LP*, 944 N.Y.S.2d 527, 529 (N.Y. App. Div. 2012) ("under New York law, such a 'holder claim' would be precluded"); *Lagermeier v. Boston Scientific Corp*., 2011 WL 2912642 at *6 (D. Minn. 2011) ("Nor is such a [holder] claim cognizable under Minnesota common law"); *The Calibre Fund, LLC v. BDO Seidman, LLP*, 2010 WL 4517099 at *5 (Conn. Super. 2010) ("A decision not to sell but to hold onto securities may be regrettable, but such decisions must always be made without the power of hindsight... . failure to sell claims are 'too speculative to be actionable"); *WM High Yield Fund v. O'Hanlon*, 2005 WL 6788446 at *13 (E.D. Pa. 2005) ("the Court declines to find that the Pennsylvania Supreme Court would find a cause of action in fraud for investors who were allegedly injured by holding securities"); *Rivers v. Wachovia Corp.*, 665 F.3d 610, 619 (4th Cir. 2011) (holding that holder claims are "too speculative to litigate" as they "involve only a hypothetical transaction"). The Court should likewise reject Plaintiff's attempt to allege holder claims because California law does not apply to a Canadian publicly-traded corporation, and there is no Canadian case law that recognizes holder claims.

But even if the Court were allow Plaintiff to pursue holder claims under California law, (1) Plaintiff's claims arising out of the exercise of stock options are not holder claims; (2) Plaintiff fails to sufficiently allege reliance and causation for both fraud and negligent misrepresentation claims; and (3) Plaintiff fails to plead scienter with the required specificity under Rule 9(b).

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1. California Law Does Not Apply to Plaintiff's Holder Claims

Plaintiff's argument that California's substantive law governs his claims because he resides in California must be rejected. Under Plaintiff's theory, each jurisdiction's substantive decision to recognize holder claims would apply only to its own residents. The natural result would be a "race to the bottom," because each jurisdiction could deprive only its own residents of such claims. No jurisdiction, as a matter of substantive law, could uniformly prohibit such claims. For this reason, only the law of the state of incorporation can establish "reliable and efficient corporate laws," *NAF Holdings, LLC v. Li & Fung (Trading) Ltd*., 118 A.3d 175, 181 (Del. 2015), that protect the control of corporation's board of directors over litigation based on injury to the corporation. As set forth above, because Midway is a Canadian Corporation Canadian substantive law governs Plaintiff's fraud and misrepresentation claims, not California law.

2. Plaintiff's Claims Arising Out of the Exercise of Stock Options are Not Holder Claims Under *Small v. Fritz*

Even if California law were to apply, the Plaintiff's claims related to the exercise of stock options are not holder claims. California law defines a holder claim as "a cause of action by persons wrongfully induced to *hold* stock instead of selling it." *Small v. Fritz*, 30 Cal.4th 167, 171, 65 P.3d 1255 (Cal. 2003) (emphasis in original). Therefore, the fact that Plaintiff *acquired* stock via exercise of the stock options negates any claim of "holding." *Id.* at 184, 65 P.3d at 1265 (distinguishing holder actions from other suits in which investors claim damages from the purchase or sale of stock).

3. Even if the Court Were To Apply California Law, Plaintiff Fails to Sufficiently Allege Reliance or Causation

Plaintiff alleges that he decided to hold his Midway shares after he exercised his stock options in reliance upon Midway's allegedly false statements in press releases and SEC filings concerning the Pan Mine's prospects, a so-called "holder's action," based on *Small v. Fritz*, 30 Cal.4th 167, 184 (2003). A complaint alleging fraud and negligent misrepresentation in a "holder action" must also be pleaded with sufficient particularity, meaning that the plaintiff must plead "facts which show how, when, where, to whom, and by what means the representations were

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tendered." *Lazar*, 12 Cal. 4th at 645, 909 P.2d at 981 (quotation omitted); *see also Small*, 30 Cal. 4th at 184, 65 P.3d at 1265 (holding that complaint for negligent misrepresentation in a holder action must be "pled with the same specificity required in a holder's action for fraud."); NRCP 9(b) ("[I]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."). *See also Anderson v. Aon Corp.*, No. 06 C 06241, 2011 WL 4565758, at *4 (N.D. Ill. Sept. 29, 2011), *aff'd*, 674 F.3d 895 (7th Cir. 2012).

In *Small*, the California Supreme Court specifically recognized the risk of meritless and vexatious strike suits being filed in order to extract a settlement, and the risk that such cases would be dependent on uncorroborated oral testimony. 30 Cal. 4th at 177, 180, 184. The Court held that such risks mandate a "device to separate meritorious and non-meritorious cases, if possible in advance of trial," and therefore require plaintiffs to show specific reliance on the challenged statements. *Id.* at 184. Thus, the court expressly limited "holder claims" to "stockholders who can make a bona fide showing of actual reliance upon the misrepresentations." *Id.* at 184-85. Conclusory assertions that plaintiff relied on the alleged misrepresentations are insufficient. As the Court stated:

> In a holder's action a ***plaintiff must allege specific reliance*** on the defendant's representations: for example, that if the plaintiff had read a truthful account of the corporation's financial status the ***plaintiff would have sold the stock, how many shares the plaintiff would have sold, and when the sale would have taken place***. The plaintiff ***must allege actions***, as distinguished from unspoken and unrecorded thoughts and decisions, that would ***indicate that the plaintiff actually relied*** on the misrepresentations. Plaintiffs who cannot plead with sufficient specificity to show a bona fide claim of actual reliance do not stand out from the mass of stockholders who rely on the market....

Id. (emphasis added).

a) Fraud.

In California, the elements of fraud are: (1) misrepresentation; (2) knowledge of falsity (or "scienter"); (3) intent to defraud; (4) justifiable reliance; and (5) resulting damage. *Small v. Fritz Companies, Inc.*, 30 Cal. 4th 167, 173, 132 Cal. Rptr. 2d 490, 65 P.3d 1255, 1258 (2003) (*citing Lazar v. Superior Court,* 12 Cal. 4th 631, 638, 49 Cal. Rptr. 2d 377, 909 P.2d 981, 984 (1996)). Plaintiff's primary allegations of fraud are that the officers and directors of Midway

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(other than himself) knew the Pan Mine was being built and operated in ways that were materially different from those assumed in the Pan Mine 2011 Study, but the D&O Defendants did not inform investors of the material impact on cash flows as a result of those differences. Apart from his assertions that Midway omitted material facts regarding the development and operation of the Pan Mine in its press releases and SEC filings, Plaintiff identifies no other circumstances or facts, which support an inference of intent or scienter relevant to Plaintiff's claims. Plaintiff lists certain "Undisclosed Facts" allegedly known by the D&O Defendants but not disclosed to the public generally or to him (SAC ¶¶ 65, 66, 70, 86), but Plaintiff has not alleged how any of the "Undisclosed Facts" demonstrate the D&O Defendants' knowledge of any alleged misrepresentations. Even more significantly, Plaintiff fails to explain with specificity how each of these alleged omissions contributed to Midway's filing of bankruptcy; each appears to relate more to Midway's purported mismanagement than fraud. Midway's mismanagement (as opposed to its fraud) is insufficient to support allegations in a holder action. *See Anderson*, 614 F.3d at 367 (explaining that any alleged fraud merely "deferred the time when the stock's price accurately reflected the value of Aon's business").

Plaintiff has also failed to sufficiently allege that he relied on any false representations regarding the Pan Mine. Plaintiff merely alleges that he relied on Midway's press releases and SEC filings "primarily those which were issued after he ceased to be Midway's Chief Executive Officer" (SAC ¶ 66) in choosing to exercise his stock options on January 23, 2014 at $.56/share when the market price was $1.27 and "its price was rising." SAC ¶ 201. In order to successfully plead "a bona fide claim of actual reliance," a plaintiff in a holder action "must allege specific reliance on the defendant's representations: for example, that if the plaintiff had read a truthful account of the corporation's financial status the plaintiff would have sold the stock, how many shares the plaintiff would have sold, and when the sale would have taken place." *Small*, 30 Cal.4th at 184, 65 P.3d at 1265.

Courts addressing California's holder's claims since *Small* have noted the difficulty plaintiffs face in meeting this standard. *See Anderson v. Aon Corp*., 614 F.3d 361, 367 (7th Cir. 2010) (remanding holder's action for application of California law while noting that under Small

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plaintiff had "a difficult road ahead" to show actual reliance and causal connection between reliance and alleged injury); *see also In re Nat'l Century Fin. Enters*., 846 F. Supp. 2d 828, 884 (S.D. Ohio 2012) ("holder claims are generally disfavored and recognized only in limited circumstances"). Like the plaintiff in *Anderson,* Plaintiff cannot show the required a causal connection between his reliance on Midway's representations and his injury.

In *Anderson*, the Northern District of Illinois, applying California law on remand, dismissed plaintiff s claim because he did not "sufficiently explain when exactly he relied on th[e] representations; how many [] shares he would have sold, had he known of the company's financial troubles; or when he would have executed that sale." *Anderson*, 2011 U.S. Dist. LEXIS 111217, at *19 (N.D. Ill. Sept. 29, 2011). The Court further noted that under insider trading laws, plaintiff would not be permitted to trade ahead of the stock price decline that allegedly would have been caused by the release of accurate information. Id. at *19-20; *Anderson*, 614 F.3d at 367 (same). On a second appeal, the Seventh Circuit affirmed dismissal with prejudice for failure to "explain how [plaintiff] could have avoided a loss on the shares he held, had [defendant] made an earlier disclosure." *Anderson v. Aon Corp*., 674 F.3d 895, 897 (7th Cir. 2012).

Just like the plaintiff in *Anderson*, Plaintiff here insists that he "carefully followed the public announcements and filings by Midway" (SAC ¶ 87), and recites almost every public announcement by Midway following his departure as CEO. But Plaintiff does not sufficiently explain when exactly he relied on those representations to hold his stock; how many Midway shares he would have sold had he known the impact on the company's financials, or when he would have executed each such sale. Nor does he sufficiently explain how he could have known to sell his shares in February 2014 when Midway stock hit an all-time high. In this case, Plaintiff does not stand apart from the millions of other stockholders who lost money when Midway's declared bankruptcy in 2015. As such, he cannot maintain a claim against the D&O Defendants based on the pleading requirements set forth in *Small v. Fritz*.

b) Negligent Misrepresentation.

To state a claim for negligent misrepresentation, the plaintiff must establish: "(1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing

it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage." *Apollo Capital Fund, LLC v. Roth Capital Partners, LLC,* 158 Cal. App. 4th 226, 243, 70 Cal. Rptr. 3d 199, 213 (Cal. Ct. App.2007) (citing *Shamsian v. Atlantic Richfield Co*., 107 Cal. App. 4th 967, 983, 132 Cal.Rptr.2d 635, 647 (Ct.App.2003)). Under California law, the tort of negligent misrepresentation is a "species of deceit." *See Bily v. Arthur Young & Co*., 3 Cal. 4th 370, 407, 11 Cal. Rptr. 2d 51, 834 P.2d 745 (1992). The SAC fails to satisfy *any* of the elements of a claim for negligent misrepresentation.

First, the SAC fails to allege a misrepresentation of a past or existing material fact by any of the D&O Defendants. Rather, Plaintiff merely lists certain "Undisclosed Facts" allegedly known by the D&O Defendants but not disclosed to the public generally or to him (SAC ¶¶ 65, 66, 70, 86). There are no allegations regarding which statements, if any, in Midway's press releases and SEC filings are misleading. Nor does Plaintiff sufficiently alleged how any Defendant made such alleged misrepresentations of a past of existing material fact "without reasonable ground for believing it to be true." On these grounds alone, the claim for negligent misrepresentation should be dismissed. *Cansino v. Bank of America*, 224 Cal. App. 4th 1462, 1469, 169 Cal. Rptr. 3d 619 (2014) ("Statements or predictions regarding future events are deemed to be mere opinions which are not actionable.") (citation omitted); *Gentry v. eBay, Inc*., 99 Cal. App. 4th 816, 835, 121 Cal. Rptr. 2d 703 (2002) ("An essential element of a cause of action for negligent misrepresentation is that the defendant must have made a misrepresentation as to a past or existing material fact.") (citation omitted).

Second, Plaintiff's allegations regarding alleged omissions or "Undisclosed Facts" (or failure to disclose by the Defendants) cannot be counted as false representations for purpose of the negligent misrepresentation claim. While the courts in some states have held that failure to disclose where there is a duty to disclose may suffice to support a negligent misrepresentation claim, the California Court of Appeal held in *Wilson v. Century 21 Great Western Realty*, 15 Cal. App. 4th 298, 18 Cal. Rptr. 2d 779 (1993) that based on the California statutory language, negligent misrepresentation specifically requires a "positive assertion." *Id.* at 306, 18 Cal. Rptr.

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2d 779; *see also In re Daisy Sys.*, 97 F.3d at 1181; *Byrum v. Brand*, 219 Cal. App. 3d 926, 942, 268 Cal. Rptr. 609 (1990).

For all the foregoing reasons, the SAC fails to state a claim for fraud or negligent misrepresentation under California law and must be dismissed with prejudice.

4. Plaintiff's Holder Claims Fail to Allege Scienter With the Specificity Required by Rule 9(b).

Finally, Plaintiff's claims for fraud and negligent misrepresentation fail to satisfy the particularity requirements of Rule 9(b). That is, the pleader must state the time, place and specific content of the false representations, as well, as the identities of the parties to the misrepresentation. *Lazar v. Superior Court*, 12 Cal. 4th 631, 645, 909 P.2d 981 (1996); *Swartz,* 476 F.3d at 764; *see also Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (averments of fraud must be accompanied by "the who, what, when, where, and how" of the misconduct charged). Rule 9(b) "requires plaintiffs to differentiate their allegations when suing more than one defendant.. and inform each defendant separately of the allegations surrounding his alleged participation in the fraud." *Swartz v. KMG LLP*, 476 F.3d 756, 764-65 (9th Cir. 2007).

The same heightened pleading standard applies to Plaintiff's negligent misrepresentation claim in California. *See, e.g., Errico v. Pac. Capital Bank, N.A.,* 753 F. Supp. 2d 1034, 1049 (N.D.Cal.2010) (negligent misrepresentation sounds in fraud and is subject to Rule 9(b) pleading requirements); *see also In re Easysaver Rewards Litig.,* 737 F. Supp. 2d 1159, 1176–77 (S.D. Cal. 2010); *Neilson v. Union Bank of Cal., N.A.,* 290 F. Supp. 2d 1101, 1141 (C.D. Cal. 2003). As shown above, even liberally construed, the SAC does not adequately allege a false or misleading statement—and fails to plead facts showing why the statements were false at the time they were made, *i.e.*, scienter. Moreover, the SAC does not allege facts showing knowledge (by the speaker) of the falsity or reliance. To the extent plaintiff has alleged that Midway made statements or predictions regarding future events, such statements are not actionable. For this additional reason, Plaintiff fails to state a claim for common law fraud or negligent misrepresentation.

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D. This Court Lacks Personal Jurisdiction Over the D&O Defendants.

The SAC failed to remedy the personal jurisdiction deficiencies that plagued the prior complaint.[26] Significantly, Plaintiff is not a Nevada resident; Midway is not a Nevada corporation; Midway is not headquartered in Nevada; and the D&O Defendants[27] do not reside in Nevada, which prompts the question: ***Why was this matter filed in Nevada?***[28] The only new allegations in the SAC relating to personal jurisdiction are found in paragraphs 8-19, which assert self-serving conclusions of law that "while with Midway, [each of the defendants'] contacts with Nevada were so continuous and systematic as to render him at home in Nevada." SAC ¶¶ 8-19. However, these factually deficient, conclusory statements do not and cannot establish personal jurisdiction.

Plaintiff continues to allege jurisdiction is proper in this state because ***one*** of the Defendants resides in Nevada. But the domicile of one individual defendant does not convey jurisdiction over the other defendants, each of which must be measured individually. The D&O Defendants' contacts with Nevada are not continuous and systematic so as to render any of them at "home" in this forum for the exercise of general jurisdiction. Furthermore, Plaintiff's claims allege reliance upon purported material omissions contained in Midway's SEC filings and press releases, which were drafted in and issued from Colorado where Midway's principal place of business and its offices are located. Because the claims asserted in this lawsuit do not arise from the D&O Defendants' purported contacts with Nevada, Plaintiff cannot meet his burden of showing that specific jurisdiction exits.

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[26] During the prior hearing, the Court expressed "some concerns with jurisdictional arguments . . . [as it] looks like Yu is probably the ***only*** person subject to general or specific jurisdiction." *See* Hr'g Tr. at 39:6-8 (Nov. 1, 2017) (emphasis added).

[27] For purposes of Section III(D), Defendant Frank Yu is not included in the defined term D&O Defendants. Nevertheless, the claims asserted against Mr. Yu are still ripe for dismissal for the reasons stated in Sections III(A)-(C).

[28] When posed with the same question during the hearing on Defendants' Motions to Dismiss, Plaintiff's counsel countered, "Well, why not Nevada?" Hr'g Tr. at 22:22 (Nov. 1, 2017). Plaintiff's counsel argued he could bring the suit wherever he wanted. *See id.* at 23:5-7 ("And it's kind of our choice on where to bring the case. Even if California would be slightly better, but Colorado would be arguably slightly better, that doesn't mean we can't bring the claim in Nevada. And that's what we did.").

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1. Legal Standard on a Rule 12(b)(2) Motion.

Due process requirements are satisfied if the nonresident defendant's contacts are sufficient to obtain either (1) general jurisdiction, or (2) specific personal jurisdiction, and it is reasonable to subject the nonresident defendants to suit in the forum state. *Viega GmbH v. Eighth Judicial Dist. Court*, 130 Nev. Adv. Op. 40, 328 P.3d 1152, 1156 (2014) (citations omitted). Courts may exercise general or "all-purpose" personal jurisdiction over a defendant "to hear any and all claims against it" only when the defendant's affiliations with the forum state "are so constant and pervasive as to render it essentially at home in the forum State." *Bauman*, 134 S. Ct. at 751. By contrast, specific personal jurisdiction comports with due process only where "the defendant's suit-related conduct" creates "a substantial connection with the forum state." *Walden v. Fiore*, 571 U.S. ___, 134 S. Ct. 1115, 1121-22 (2014).

2. This Court Lacks General Jurisdiction Over the D&O Defendants.

General jurisdiction over a defendant allows a plaintiff to assert claims against that defendant unrelated to the forum. *Viega GmbH*, 328 P.3d at 1157. General jurisdiction approximates physical presence in the forum. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004). "This is an ***exacting standard***, as it should be, because a finding of general jurisdiction permits a defendant to be hailed into court in the forum state to answer for any of its activities anywhere in the world." *Id.* (emphasis added). Such broad jurisdiction is available only in limited circumstances, when a non-resident defendant's contacts with the forum state are so "'continuous and systematic' as to render [it] essentially ***at home*** in the forum State." *Viega GmbH*, 328 P.3d at 1157 (internal citations omitted) (emphasis added). As recently clarified by the United States Supreme Court, "only a limited set of affiliations with a forum will render a defendant amenable to general jurisdiction there." *Bauman*, 134 S. Ct. at 760. "For an individual, ***the paradigm forum for the exercise of general jurisdiction is the individual's domicile***. . . ." *Id.* (citations omitted) (emphasis added).

The Complaint does not and cannot allege that the D&O Defendants have the "substantial" or "continuous and systematic" contacts with Nevada that would warrant the application of

general jurisdiction. *See, e.g., Trump*, 109 Nev. at 699. The supporting declarations establish that with a few isolated exceptions, ***none of the D&O Defendants***:

- Are residents of Nevada (Ex. A ¶ 3; Ex. B ¶ 3; Ex. C ¶ 3; Ex. D ¶¶ 1, 4; Ex. E ¶ 3; Ex. F ¶ 3; Ex. G ¶¶ 2-3);
- Own personal or real property, or have any other personal assets in Nevada (Ex. A ¶ 6; Ex. B ¶ 6; Ex. C ¶ 8; Ex. D ¶ 8; Ex. E ¶ 6; Ex. F ¶ 6; Ex. G ¶ 6);
- Own or maintain any offices in Nevada (Ex. A ¶ 5; Ex. B ¶¶ 4, 11; Ex. C ¶¶ 5, 14; Ex. D ¶¶ 5, 13; Ex. E ¶¶ 4, 12; Ex. F ¶¶ 4, 9; Ex. G ¶ 10);
- Hold any Nevada licenses (Ex. A ¶ 8; Ex. B ¶ 9; Ex. C ¶ 12; Ex. D ¶ 11; Ex. E ¶ 10; Ex. F ¶ 8; Ex. G ¶ 9);
- Own any interest in any companies or corporations organized in Nevada or held any managerial or employment positions with any such companies or corporations (Ex. A ¶ 15; Ex. B ¶ 10; Ex. C ¶ 13; Ex. D ¶ 12; Ex. E ¶ 11);[29]
- Own or maintain any bank accounts in Nevada (Ex. A ¶ 17; Ex. B ¶ 13; Ex. C ¶ 16; Ex. D ¶ 15; Ex. E ¶ 14; Ex. F ¶ 11; Ex. G ¶ 12);
- Maintain any telephone, facsimile or telex number in Nevada (Ex. A ¶ 18; Ex. B ¶ 14; Ex. C ¶ 17; Ex. D ¶ 16; Ex. E ¶ 15; Ex. F ¶ 12; Ex. G ¶ 13);
- Been required to maintain, or maintained, a registered agent for service in Nevada (Ex. A ¶ 19; Ex. B ¶ 15; Ex. C ¶ 18; Ex. D ¶ 17; Ex. E ¶ 16; Ex. F ¶ 13; Ex. G ¶ 14); or
- Been a party to a lawsuit in Nevada, except for the instant case (Ex. A ¶ 20; Ex. B ¶ 16; Ex. C ¶ 19; Ex. D ¶ 18; Ex. E ¶ 17; Ex. G ¶ 15).[30]

The D&O Defendants have only occasionally traveled to Nevada, primarily in fulfilling their official corporate duties as board members of Midway. Furthermore, the sections of the SAC entitled "Parties" and "Jurisdiction and Venue" do not allege that any of the D&O Defendants have any of the kinds of contacts with Nevada that might suffice for the exercise of general jurisdiction. Thus, the D&O Defendants do not have the "continuous and systematic" contacts

[29] Mr. Newell has owned an interest in a company organized in the State of Nevada, but his relationship to said company has nothing to do with the claims asserted in this lawsuit.

[30] Mr. Newell was a party to a lawsuit in Nevada.

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with Nevada that would render them essentially at "home" in Nevada, which is necessary to support a finding of general jurisdiction. *Viega GmbH*, 328 P.3d at 1157.

3. This Court Lacks Specific Jurisdiction Over the D&O Defendants.

In deciding whether exercising specific personal jurisdiction is appropriate, the Court considers a three-prong test:

> [1] [t]he defendant must purposefully avail himself of the privilege of acting in the forum state or of causing important consequences in that state. [2] The cause of action must arise from the consequences in the forum state of the defendant's activities, and [3] those activities, or the consequences thereof, must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

Consipio Holding, BV v. Carlberg, 128 Nev., Adv. Op. 43, 282 P.3d 751, 755 (2012) (quotation omitted); *see also Viega GmbH*, 328 P.3d at 1157. As the United States Supreme Court recognized: "whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on 'the relationship among the defendant, the forum, and the litigation.'" *Walden,* 134 S. Ct. at 1122 (internal citations omitted). For a state to exercise jurisdiction consistent with due process, the suit must arise "out of contacts that the 'defendant *himself*' creates with the forum State." *Id*. (quoting *Burger King Corp.,* 471 U.S. at 475, 105 S. Ct. at 2174) (emphasis in original).

In this case, Plaintiff has not alleged that the D&O Defendants engaged in any specific "suit-related conduct" that would create a substantial connection between them and Nevada. *See, generally,* SAC. The only basis for jurisdiction asserted in the SAC is that at least one Defendant, *i.e.*, Frank Yu, resided and still resides in Nevada. SAC ¶ 16. Each of the claims asserted in the SAC arise out of Plaintiff's reliance upon purported material omissions contained in Midway's SEC filings and press releases. *See* SAC ¶¶ 101, 106, 126, 127, 135, 136. What matters for specific jurisdiction purposes is that Plaintiff has not alleged, and cannot allege, that any of the D&O Defendants' allegedly tortious conduct (material omissions in public filings) took place in Nevada. *See, generally,* SAC. Indeed, the SEC filings and press releases were entirely drafted in and issued from the state of ***Colorado*** where Midway's principal place of business and executive offices are located. They were also received and purportedly acted upon by Plaintiff in

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the state of ***California***. *See* SAC ¶ 1. Absent evidence to the contrary, there is no basis for the exercise of specific jurisdiction, and dismissal of Plaintiff's SAC must follow.

Even if Midway were a Nevada corporation (and it is not), mere affiliation with a Nevada operation is not enough to confer jurisdiction on nonresident defendants. *See Southport Lane Equity II, LLC v. Downey*, 177 F. Supp. 3d 1286 (D. Nev. 2016). In *Southport Lane*, a shareholder brought direct and derivative action against a corporation's directors and officers, alleging breach of fiduciary, unjust enrichment, and requesting a declaration that a shareholder's designee is a member of the board and to declare void a transaction that diluted the shareholder's shares, and requesting appointment of a receivership. The non-resident corporate officers and directors each moved to dismiss for lack of personal jurisdiction and failure to state a claim. In granting the motion to dismiss, the court held that non-resident director and officer defendants' mere affiliation with the Nevada corporation was insufficient for personal jurisdiction. *Id.* at 1296. The court recognized that "a mere connection between a defendant and a plaintiff that has contacts with the forum state or that has been injured in the state is insufficient for personal jurisdiction under the Due Process Clause." *Id.* As a result, the court concluded, "[s]ubjecting the directors or officers of a corporation to jurisdiction in any forum in which a corporation operates or is incorporated when the directors or officers have no personal contacts whatsoever with the forum state denies them due process protection." *Id.* The court acknowledged, "what matters most in this analysis is not the corporation's own contacts with Nevada but the ***individual Defendants' contacts with the State***." *Id.* (emphasis added).

Here, the exercise of personal jurisdiction is even more tenuous because ***Plaintiff is not a Nevada citizen*** and ***Midway is not a Nevada corporation***. Furthermore, there is nothing in the pleadings or declarations that provide this Court with a basis to support a finding that the D&O Defendants had any contact with Nevada related to the purportedly wrongful conduct alleged in the Complaint. The D&O Defendants did not perform any of the acts alleged against them in Nevada, but rather Colorado. The only connection the D&O Defendants have to Nevada is attending the ceremonial groundbreaking of the Pan Mine and the occasional board meeting. However, Plaintiff's claims do not arise out of or relate to any representations made during the

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groundbreaking or board meetings in Nevada. Because no Nevada corporation is involved in this suit and the D&O Defendants did not expressly aim any conduct at Nevada associated with Plaintiff's allegations of wrongdoing, this Court has no specific jurisdiction over the D&O Defendants and must dismiss the Complaint.

IV.

CONCLUSION

For a second time, Plaintiff raises only conclusory allegations that the D&O Defendants concealed material information with respect to the progress of the Pan Mine. But conclusory allegations, without more, do not state a claim. The Court should therefore grant the D&O Motion to Dismiss Plaintiff's Second Amended Complaint with prejudice.

Midway is a British Columbian corporation. The internal affairs doctrine requires that the law of the forum of incorporation governs Plaintiff's derivative claims, regardless of the label, and therefore, the BCA controls. Sections 232 and 233 of the BCA require Plaintiff to seek leave of the Supreme Court of British Columbia before proceeding with its claims for breach of fiduciary duty and aiding and abetting breach of fiduciary duty. Plaintiff did not seek such leave, accordingly, this Court has no subject matter jurisdiction over Plaintiff's derivative claims, and such claims should be dismissed.

California's state securities law, by its explicit terms, limits claims for misrepresentation and omission to those "in connection with a purchase or sale" in California. Plaintiff failed to allege any false statements were made by the D&O Defendants in connection with the "purchase or sale" of a security because the exercise of Plaintiff's stock options are deemed to be "a purchase or sale" when the options were granted in 2009, not when they were exercised in 2014, pursuant to statute.

Next, the Court should dismiss with prejudice Plaintiff's so-called holder claims under California law for common law fraud and negligent misrepresentation. Plaintiff fails to sufficiently allege reliance, causation, and scienter with the required specificity under Rule 9(b).

Lastly, this Court continues to have no basis to exercise personal jurisdiction over the D&O Defendants as their contacts are insufficient as a matter of law. D&O Defendants therefore

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respectfully request that this Court grant the Motion and enter an order dismissing the Second Amended Complaint in its entirety, with prejudice.

DATED this 16th day of March 2018.

By __/s/ David J. Freeman_____
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that on the 16th day of March, 2018, I served a true and correct copy of the foregoing **D&O DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT** by the following method(s):

[X] Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

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EXHIBIT A

EXHIBIT A

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DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL E. WOLFUS, , Plaintiff, v. 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-C DEPT. NO.: X **DECLARATION OF RODNEY D. KNUTSON IN SUPPORT OF D&O DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT**

I, Rodney D. Knutson, hereby declare as follows:

1. Midway Gold Corp. ("Midway") was a Canadian Corporation incorporated under the Company Act of British Columbia with its executive offices and principal place of business in Colorado.

2. From June 2013 to June 2014, I was a member of the Board of Directors of Midway.

3. During that time and continuing through today, I have resided in Aspen, Colorado.

4. I conducted all of my business as a Director of Midway from my home in Aspen, Colorado or at Midway's corporate offices located in Englewood, Colorado.

5. I do not have an office in Nevada.

6. I do not own any personal or real property in Nevada, nor do I have any other personal assets in Nevada.

7. During the time I served as Director of Midway, I attended the Pan Mine ground breaking ceremony and Board meeting in Nevada in January 2014.

8. I am an attorney who was licensed to practice law in the State of Colorado on May 2, 1973.

9. I was employed as an associate attorney at Dawson, Nagel, Sherman & Howard after graduation from the University of Denver College of Law in December 1972. The law firm later changed its name to Sherman & Howard;

10. Although I never lived in Nevada, Sherman & Howard acquired another law firm in Reno, Nevada and those attorneys became my partners. Indirectly, I therefore had minimal contact with the State of Nevada, although not during my tenure as a Director of Midway;

11. Also, I have traveled to Nevada on several occasions (but not during the period of June 2013 to June 2014) to work on legal matters for my Denver clients (before and after I left Sherman & Howard) to attend my wife's birthday party in Las Vegas, to attend short trips with friends, business associates and clients.

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12. To the extent I attended other Board meetings, they were conducted in Colorado, not Nevada.

13. To the extent SEC filings or press releases were drafted, to the best of my knowledge and belief, they were drafted in Englewood, Colorado and issued out of Englewood, Colorado, not Nevada.

14. I have never resided in the State of Nevada;

15. I do not own an interest in any companies or corporations organized in the State of Nevada nor do I hold any managerial or employment positions with any such companies or corporations;

16. I do not hold a security interest in any real or personal property in the State of Nevada;

17. I do not maintain any bank accounts in the State of Nevada;

18. I do not maintain any telephone, facsimile or telex number in the State of Nevada;

19. I have not been required to maintain, or maintained, a registered agent for service in the State of Nevada;

20. I have not been a party to a lawsuit in the State of Nevada, except for the instant case;

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

DATED this 14th day of August 2017

Rodney D. Knutson

RODNEY KNUTSON

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EXHIBIT B

EXHIBIT B

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DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL E. WOLFUS, , Plaintiff, v. 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-C DEPT. NO.: X **DECLARATION OF BRADLEY J. BLACKETOR IN SUPPORT OF D&O DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT**

I, Bradley J. Blacketor, hereby declare as follows:

1. From December 5, 2013 to July 6, 2015, I was the Chief Financial Officer of Midway Gold Corp. ("Midway").

2. Midway was a Canadian Corporation incorporated under the Company Act of British Columbia with its executive offices and principal place of business in Colorado.

3. At all relevant times I have resided in Lone Tree, Colorado.

4. I conducted all of my business as CFO of Midway in Midway's offices located in Englewood, Colorado.

5. During my tenure as CFO of Midway, I travelled to Nevada approximately 6 times. I attended the ground breaking ceremony at the Pan Mine and board meeting in Ely, Nevada on January 13-14, 2014; the annual meeting in Las Vegas in June 2014; Pan Project staff meetings in July 2014, August 2014 and October 2014; and I visited the Pan Mine site with representatives of Commonwealth Bank of Australia in January 2015.

6. I do not own any personal or real property in Nevada, nor do I have any other personal assets in Nevada.

7. To the extent SEC filings or press releases were drafted, to the best of my knowledge and belief, they were drafted in Englewood, Colorado and issued out of Englewood, Colorado, not Nevada.

8. I have never lived in the State of Nevada;

9. I do not hold any licenses in the State of Nevada;

10. I do not own an interest in any companies or corporations organized in the State of Nevada;

11. I do not maintain an office or other business premises of any kind in the State of Nevada;

12. I do not hold a security interest in any real or personal property in the State of Nevada;

13. I do not maintain any bank accounts in the State of Nevada;

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14. I do not maintain any telephone, facsimile or telex number in the State of Nevada;

15. I have not been required to maintain, or maintained, a registered agent for service in the State of Nevada;

16. I have not been a party to a lawsuit in the State of Nevada, except for the instant case.

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

DATED this 15th day of August 2017

BRADLEY J. BLACKETOR

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EXHIBIT C

EXHIBIT C

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DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL E. WOLFUS, , Plaintiff, v. 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-C DEPT. NO.: X **DECLARATION OF RICHARD SAWCHAK IN SUPPORT OF D&O DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT**

I, Richard Sawchak, hereby declare as follows:

1. Midway Gold Corp. ("Midway") was a Canadian Corporation incorporated under the Company Act of British Columbia with its executive offices and principal place of business in Colorado.

2. From June 2014 until June 2015, I was a member of the Board of Directors of Midway.

3. While serving on the Board of Directors of Midway, I resided in Hamilton, Virginia where I still reside.

4. I conducted almost all of my business as a Director of Midway from my home in Hamilton, Virginia or at Midway's corporate offices located in Englewood, Colorado.

5. I do not have an office in Nevada.

6. As a Director of Midway, my only contact with Nevada was to attended the annual meeting of Midway held in Las Vegas, Nevada in 2014.

7. Currently I am the Chief Financial Officer of a company located in McLean, Virginia.

8. I do not own any personal or real property in Nevada, nor do I have any other personal assets in Nevada.

9. To the extent I attended Board meetings they were conducted in Colorado, not Nevada.

10. To the extent SEC filings or press releases were drafted, to the best of my knowledge and belief, they were drafted in Englewood, Colorado and issued out of Englewood, Colorado, not Nevada.

11. I have never lived in the State of Nevada.

12. I do not hold any licenses in the State of Nevada;

13. I do not own an interest in any companies or corporations organized in the State of Nevada nor do I hold any managerial or employment positions with any such companies or corporations;

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14. I do not maintain an office or other business premises of any kind in the State of Nevada;

15. I do not hold a security interest in any real or personal property in the State of Nevada;

16. I do not maintain any bank accounts in the State of Nevada;

17. I do not maintain any telephone, facsimile or telex number in the State of Nevada;

18. I have not been required to maintain, or maintained, a registered agent for service in the State of Nevada;

19. I have not been a party to a lawsuit in the State of Nevada, except for the instant case.

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

DATED this 14 day of August 2017

RICHARD SAWCHAK

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EXHIBIT D

EXHIBIT D

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DISTRICT COURT

CLARK COUNTY, NEVADA

DANIEL E. WOLFUS, , Plaintiff, v. 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-C DEPT. NO.: X **DECLARATION OF JOHN W. SHERIDAN IN SUPPORT OF D&O DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT**

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I, John W. Sheridan, hereby declare as follows:

1. I am a citizen of Canada.

2. Midway Gold Corp. ("Midway") was a Canadian Corporation incorporated under the Company Act of British Columbia with its executive offices and principal place of business in Colorado.

3. From February 2012 to June 2015, I was a Director of Midway.

4. I currently reside in Kingston Ontario, Canada. During the time I served as a Director of Midway, I resided in Vancouver, British Columbia.

5. I conducted all of my business as a Director of Midway from my Vancouver, British Columbia home or at Midway's corporate offices located in Englewood Colorado.

6. I have not been to Nevada for professional reasons other than twice: once to attend the groundbreaking ceremony at the Pan Mine and a Board meeting in January 2014 and once in August 2014 to attend a Midway Board meeting in Ely Nevada.

7. To the extent I attended Board meetings they were held in Colorado, not Nevada, with the exception of two board meetings referred to in paragraph 7 above.

8. I do not own any personal or real property in Nevada, nor do I have any other personal assets in Nevada.

9. To the extent SEC filings or press releases were drafted, to the best of my knowledge and belief, they were drafted in Englewood, Colorado and issued out of Englewood, Colorado, not Nevada.

10. I have never lived in the State of Nevada;

11. I do not hold any licenses in the State of Nevada;

12. I do not own an interest in any companies or corporations organized in the State of Nevada nor do I hold any managerial or employment positions with any such companies or corporations;

13. I do not maintain an office or other business premises of any kind in the State of Nevada;