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3/30/2020 1:11 PM
Steven D. Grierson
CLERK OF THE COURT

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 3861
James R. Christensen PC
601 S. 6th St.
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(702) 272-0406 / (702) 272-0415 fax
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Attorneys for Plaintiff, DANIEL E. WOLFUS

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Apr 08 2020 09:41 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

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.: 27

NOTICE OF APPEAL

Case Number A-17-756971-B
Docket 80949 Document 2020-13258

Case Number: A-17-756971-B

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

JAMES R. CHRISTENSEN, PC
601 South 6th Street
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Notice of Appeal was filed removing (iii) the Court Minutes dated May 18, 2018.

Dated this 30th of March 2020.

/s/ Samuel T. Rees

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Attorneys for Plaintiff DANIEL E. WOLFUS

CERTIFICATE OF SERVICE

I CERTIFY SERVICE of **NOTICE OF APPEAL** was made this date by electronic service (via Odyssey) to all parties currently shown on the Court's e-serve list of recipients this 30th day of March 2020.

/s/ Dawn Christensen

An employee of James R. Christensen

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3/30/2020 1:11 PM
Steven D. Grierson
CLERK OF THE COURT

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Attorneys for Plaintiff, DANIEL E. WOLFUS

JAMES R. CHRISTENSEN, PC
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Las Vegas, Nevada 89101

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.: 27

CASE APPEAL STATEMENT

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

(1) **Name of the Respondent/Cross-Appellant filing this Case Appeal Statement:** Daniel E. Wolfus

(2) **Identify the Judge Issuing the Decision, Judgment, or Order Appealed from:** The Honorable Nancy Allf signed and entered the orders that are being appealed.

(3) **Identify each Respondent/Cross Appellant and the name and address of Counsel for each Respondent/Cross Appellant**: Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson. Their counsel are Robert J. Cassity, Esq., David J. Freeman, Esq. HOLLAND & HART LLP, 9555 Hillwood Drive, 2nd Floor, Las Vegas, Nevada 89134 and Holly Stein Sollod, Esq. (Admitted *Pro Hac Vice*), HOLLAND & HART LLP, 555 17th Street, Suite 3200, Denver, Colorado 80202.

Kenneth A. Brunk. His counsel are Jason D. Smith, Santoro Whitmire, 10100 W. Charleston Boulevard, Suite 250, Las Vegas, Nevada 89135 and Eric B. Liebman, Esq. (Admitted *Pro Hac Vice*) and Rebecca B. DeCook, Esq. (Admitted Pro Hac Vice) Maye White, LLP, 1400 16th Street, 6th Floor, Denver, Colorado 80202.

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

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

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

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

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

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

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

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

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

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

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

JAMES R. CHRISTENSEN, PC
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Las Vegas, Nevada 89101

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

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

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

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

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

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

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

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

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

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

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

On March 4, 2020, a Judgment was entered in favor of Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell, Rodney D. Knutson and against Plaintiff Daniel E. Wolfus in the amount of $5,119.30. Notice of Entry of Judgment was entered March 5, 2020.

On March 30, 2020 Appellant filed a Notice of Appeal of the March 4, 2020 judgment, for which notice of entry was entered March 5, 2020.

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Las Vegas, Nevada 89101

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Las Vegas, Nevada 89101

(11) **Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding**: This case has previously been before the Nevada Supreme Court. The caption of that proceeding is *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, Petitioners, v. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE NANCY L. ALLF, DISTRICT JUDGE, DEPT. 27, Respondents, And DANIEL E. WOLFUS, Real Parties in Interest.* The docket number of that proceeding is 76052.

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

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

Dated this 30th day of March 2020.

/s/ Samuel T. Rees
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Attorneys for Plaintiff DANIEL E. WOLFUS

CERTIFICATE OF SERVICE

I CERTIFY SERVICE of **CASE APPEAL STATEMENT** was made this date by electronic service (via Odyssey) to all parties currently shown on the Court's e-serve list of recipients this 30th day of March 2020.

/s/ Dawn Christensen
An employee of James R. Christensen

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

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-17-756971-B

Daniel Wolfus, Plaintiff(s)	§	Location:	**Department 27**
vs.	§	Judicial Officer:	**Allf, Nancy**
Richard Moritz, Defendant(s)	§	Filed on:	**06/15/2017**
	§	Case Number History:	
	§	Cross-Reference Case Number:	**A756971**
	§	Supreme Court No.:	**80613**

CASE INFORMATION

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

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

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

DATE — CASE ASSIGNMENT

Current Case Assignment

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

PARTY INFORMATION

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

	Retained 702-792-3773(W)
Knutson, Rodney D	**Cassity, Robert J.** *Retained* 702-669-4600(W)
Moritz, Richard D.	**Cassity, Robert J.** *Retained* 702-669-4600(W)
Newell, Roger A	**Cassity, Robert J.** *Retained* 702-669-4600(W)
Sawchak, Richard	**Cassity, Robert J.** *Retained* 702-669-4600(W)
Sheridan, John W	**Cassity, Robert J.** *Retained* 702-669-4600(W)
Yu, Frank	**Cassity, Robert J.** *Retained* 702-669-4600(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX

EVENTS

06/15/2017	Complaint Filed By: Plaintiff Wolfus, Daniel E. *Complaint for Damages*
06/15/2017	Initial Appearance Fee Disclosure Filed By: Plaintiff Wolfus, Daniel E. *Initial Appearance Fee Disclosure*
06/15/2017	Summons Electronically Issued - Service Pending *Summons*
06/30/2017	First Amended Complaint Filed By: Plaintiff Wolfus, Daniel E. *First Amended Complaint for Damages*
06/30/2017	Summons Electronically Issued - Service Pending Party: Plaintiff Wolfus, Daniel E. *First Amended Summons*
07/12/2017	Acceptance of Service Filed By: Plaintiff Wolfus, Daniel E. *Acceptance of Service (Moritz, Blacketor, Haddon, Sawchak, Sheridan, Yu, Newell, Knutson)*
07/12/2017	Acceptance of Service Filed By: Plaintiff Wolfus, Daniel E. *Acceptance of Service (Hale, Anderson, Klein, LLCs)*
07/13/2017	Initial Appearance Fee Disclosure *Initial Appearance Fee Disclosure*

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

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

08/29/2017 Notice of Change of Hearing
Notice of Change of Hearing

09/11/2017 Errata
Filed By: Defendant Brunk, Kenneth A.
Errata to Motion to Dismiss of Kenneth A. Brunk and Joinder in D&O Defendants' Motion to Dismiss Amended Complaint

09/18/2017 Motion to Associate Counsel
Filed By: Defendant Brunk, Kenneth A.
Defendant Kenneth A. Brunk's Motion to Associate Counsel

09/20/2017 Stipulation and Order
Filed by: Plaintiff Wolfus, Daniel E.
Stipulation and Order to Continue Hearing and Filing Deadlines

09/27/2017 Notice of Entry of Stipulation and Order
Filed By: Plaintiff Wolfus, Daniel E.
Notice of Entry of Stipulation and Order to Continue Hearing and Filing Deadlines

10/06/2017 Opposition to Motion to Dismiss
Filed By: Plaintiff Wolfus, Daniel E.
Consolidated Opposition to Motions to Dismiss

10/12/2017 Order Granting
Filed By: Defendant Moritz, Richard D.
Order Granting Motion to Associate Counsel

10/13/2017 Notice of Entry of Order
Filed By: Defendant Moritz, Richard D.
Notice of Entry of Order

10/24/2017 Motion to Associate Counsel
Filed By: Plaintiff Wolfus, Daniel E.
Motion to Associate Counsel

10/25/2017 Reply in Support
Filed By: Defendant Brunk, Kenneth A.
Reply in Support of Motion to Dismiss Kenneth A. Brunk and Joinder in Reply Memorandum in Support of D&O Defendants' Motion to Dismiss Amended Complaint

10/25/2017 Reply in Support
Filed By: Defendant Anderson, Trey; Defendant Hale, Martin M, Jr.; Defendant Klein, Nathaniel; Defendant INV-MID LLC; Defendant EREF-MID II LLC; Defendant HCP-MID LLC
Reply in Support of Motion to Dismiss and Joinder to D&O Defendants Reply in Support of Motion to Dismiss Amended Complaint

10/25/2017 Reply in Support
Filed By: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J; Defendant Haddon, Timothy; Defendant Sawchak, Richard; Defendant Yu, Frank; Defendant Sheridan, John W; Defendant Newell, Roger A; Defendant Knutson, Rodney D

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

11/06/2017 Order Admitting to Practice
Filed By: Defendant Brunk, Kenneth A.
Order Admitting to Practice

11/06/2017 Order Admitting to Practice
Filed By: Defendant Brunk, Kenneth A.
Order Admitting to Practice

11/06/2017 Order Admitting to Practice
Filed By: Defendant Brunk, Kenneth A.
Order Admitting to Practice

11/07/2017 Recorders Transcript of Hearing
Transcript of Proceedings, All Pending Motions to Dismiss and Joinders, Heard on November 1, 2017

12/26/2017 Notice
Filed By: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J; Defendant Haddon, Timothy; Defendant Sawchak, Richard; Defendant Yu, Frank; Defendant Sheridan, John W; Defendant Newell, Roger A; Defendant Knutson, Rodney D
Notice of Submission of Proposed Order Granting Defendants' Motions to Dismiss Amended Complaint Without Prejudice

12/28/2017 Order Granting Motion
Filed By: Plaintiff Wolfus, Daniel E.
Order Granting Plaintiff's Motion to Associate Counsel

12/29/2017 Notice
Filed By: Plaintiff Wolfus, Daniel E.
Notice of Submission of Proposed Order(s)

01/05/2018 Order Granting
Filed By: Defendant Moritz, Richard D.
Order Granting Defendants' Motions to Dismiss Amended Complaint Without Prejudice

01/08/2018 Notice of Entry of Order
Filed By: Defendant Moritz, Richard D.
Notice of Entry of Order Granting Defendants' Motions to Dismiss Amended Complaint Without Prejudice

01/11/2018 Notice of Entry of Order
Filed By: Plaintiff Wolfus, Daniel E.
Notice of Entry of Order Granting Plaintiff's Motion to Associate Counsel

02/05/2018 Second Amended Complaint
Filed By: Plaintiff Wolfus, Daniel E.
Second Amended Complaint

02/05/2018 Summons Electronically Issued - Service Pending
Party: Plaintiff Wolfus, Daniel E.
Second Amended Summons

03/16/2018 Motion to Dismiss
Filed By: Defendant Anderson, Trey; Defendant Hale, Martin M, Jr.; Defendant Klein, Nathaniel; Defendant INV-MID LLC; Defendant EREF-MID II LLC; Defendant HCP-MID LLC
Motion to Dismiss and Joinder to D&O Defendants' Motionto Dismiss Second Amended Complaint

03/16/2018 Motion to Dismiss
D&O Defendants' Motion to Dismiss Second Amended Complaint

03/16/2018 Motion to Dismiss
Filed By: Defendant Brunk, Kenneth A.
Kenneth A. Brunk's Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants' Motion to Dismiss Second Amended Complaint

04/18/2018 Opposition to Motion to Dismiss
Filed By: Plaintiff Wolfus, Daniel E.
Plaintiff's Opposition to Motion to Dismiss Second Amended Complaint

05/02/2018 Reply in Support
Filed By: Defendant Brunk, Kenneth A.
Kenneth A. Brunk's Reply in Support of Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants' Reply in Support of Motion to Dismiss Second Amended Complaint

05/02/2018 Reply in Support
Filed By: Defendant Anderson, Trey; Defendant Hale, Martin M, Jr.; Defendant Klein, Nathaniel; Defendant INV-MID LLC; Defendant EREF-MID II LLC; Defendant HCP-MID LLC
Reply in Support of Motion to Dismiss and Joinder to D&O Defendants Reply in Support of Motion to Dismiss Second Amended Complaint

05/02/2018 Reply
Reply In Support of D&O Defendants' Motion to Dismiss Second Amended Complaint

05/14/2018 Recorders Transcript of Hearing
Recorders Transcript Hearing All Pending Motions May 9, 2018

06/01/2018 Notice
Filed By: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J; Defendant Haddon, Timothy; Defendant Sawchak, Richard
Notice of Submission of Proposed Order Regarding Defendants' Motions to Dismiss Second Amended Complaint

06/06/2018 Order
Filed By: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J
Order Regarding Defendants' Motions to Dismiss Second Amended Complaint

06/07/2018 Objection
Filed By: Plaintiff Wolfus, Daniel E.
Notice of Submission of Objections to Defendants' Proposed Order Regarding Defendants' Motions to Dismiss Second Amended Complaint

06/07/2018 Notice of Entry of Order
Filed By: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J; Defendant Haddon, Timothy

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

06/14/2018 Motion
Filed By: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J; Defendant Haddon, Timothy
Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court; Ex Parte Application for Order Shortening Time

06/15/2018 Joinder To Motion
Filed By: Defendant Brunk, Kenneth A.
Kenneth A. Brunk's Joinder in Support of D&O Defendants' Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court and Ex Parte Application for Order Shortening Time

06/19/2018 Opposition
Filed By: Plaintiff Wolfus, Daniel E.
Wolfus' Opposition to Defendants' Motion to Stay Proceedings

06/19/2018 Joinder
Filed By: Defendant Anderson, Trey; Defendant Hale, Martin M, Jr.; Defendant Klein, Nathaniel
Joinder to Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court

06/19/2018 Motion for Discovery
Filed By: Plaintiff Wolfus, Daniel E.
Plaintiff's Motion for Additional Discovery; Order Shortening Time

06/20/2018 Reply
Filed by: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J; Defendant Haddon, Timothy
Reply in Support of the D&O Defendants' Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court on OST

06/20/2018 Joinder
Filed By: Defendant Brunk, Kenneth A.
Kenneth A. Brunk s Joinder in Support of D&O Defendants Reply in Support of the D&O Defendants Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to The Nevada Supreme Court on Order Shortening Time

06/20/2018 Joinder
Filed By: Defendant Anderson, Trey; Defendant Hale, Martin M, Jr.; Defendant Klein, Nathaniel
Joinder to Reply in Support of D&O Defendants Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court

06/26/2018 Order Granting
Filed By: Defendant Moritz, Richard D.; Defendant Blacketor, Bradley J; Defendant Haddon, Timothy
Order Granting Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court

06/27/2018 Notice of Entry of Order
Filed By: Defendant Moritz, Richard D.
Notice of Entry of Order Granting Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court

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

Amended Complaint

12/04/2019 Notice
Notice of Submission of Proposed Final Order and Objection

01/10/2020 Order Granting Motion
Order Granting Defendants' Motions to Dismiss Second Amended Complaint

01/13/2020 Notice of Entry of Order
Notice of Entry of Order Granting Defendants' Motions to Dismiss Second Amended Complaint

01/15/2020 Memorandum of Costs and Disbursements
D&O Defendants' Verified Memorandum of Costs

01/15/2020 Appendix
Appendix of Exhibits to D&O Defendants' Verified Memorandum of Costs

02/12/2020 Notice of Appeal
Filed By: Plaintiff Wolfus, Daniel E.
Notice of Appeal

02/12/2020 Case Appeal Statement
Filed By: Plaintiff Wolfus, Daniel E.
Case Appeal Statement

02/13/2020 Notice of Posting of Cost Bond
Filed By: Plaintiff Wolfus, Daniel E.
Notice of Posting Cost Bond

03/04/2020 Judgment
Judgment

03/05/2020 Notice of Entry of Judgment
Filed By: Defendant Moritz, Richard D.
Notice of Entry of Judgment

03/30/2020 Amended Notice of Appeal
Party: Plaintiff Wolfus, Daniel E.
Amended Notice of Appeal

03/30/2020 Notice of Appeal
Filed By: Plaintiff Wolfus, Daniel E.
Notice of Appeal

03/30/2020 Case Appeal Statement
Filed By: Plaintiff Wolfus, Daniel E.
Case Appeal Statement

DISPOSITIONS

01/05/2018 **Order of Dismissal Without Prejudice** (Judicial Officer: Allf, Nancy)
Debtors: Daniel E. Wolfus (Plaintiff)

Creditors: Trey Anderson (Defendant), Richard D. Moritz (Defendant), Kenneth A. Brunk (Defendant), Bradley J Blacketor (Defendant), Timothy Haddon (Defendant), Martin M Hale, Jr.

(Defendant), Richard Sawchak (Defendant), Frank Yu (Defendant), John W Sheridan (Defendant), Roger A Newell (Defendant), Rodney D Knutson (Defendant), Nathaniel Klein (Defendant), INV-MID LLC (Defendant), EREF-MID II LLC (Defendant), HCP-MID LLC (Defendant)
Judgment: 01/05/2018, Docketed: 01/08/2018
Comment: First Amended Complaint for Damages

06/06/2018 **Order of Dismissal With Prejudice** (Judicial Officer: Allf, Nancy)
Debtors: Daniel E. Wolfus (Plaintiff)
Creditors: Trey Anderson (Defendant), Richard D. Moritz (Defendant), Kenneth A. Brunk (Defendant), Bradley J Blacketor (Defendant), Timothy Haddon (Defendant), Martin M Hale, Jr. (Defendant), Richard Sawchak (Defendant), Frank Yu (Defendant), John W Sheridan (Defendant), Roger A Newell (Defendant), Rodney D Knutson (Defendant), Nathaniel Klein (Defendant), INV-MID LLC (Defendant), EREF-MID II LLC (Defendant), HCP-MID LLC (Defendant)
Judgment: 06/06/2018, Docketed: 06/07/2018
Comment: Certain Claim
Debtors: Daniel E. Wolfus (Plaintiff)
Creditors: INV-MID LLC (Defendant), EREF-MID II LLC (Defendant), HCP-MID LLC (Defendant)
Judgment: 06/06/2018, Docketed: 06/07/2018
Comment: 2nd ACOM

01/10/2020 **Order of Dismissal With Prejudice** (Judicial Officer: Allf, Nancy)
Debtors: Daniel E. Wolfus (Plaintiff)
Creditors: Richard D. Moritz (Defendant), Bradley J Blacketor (Defendant), Timothy Haddon (Defendant), Richard Sawchak (Defendant), Frank Yu (Defendant), John W Sheridan (Defendant), Roger A Newell (Defendant), Rodney D Knutson (Defendant)
Judgment: 01/10/2020, Docketed: 01/13/2020
Comment: Certain Claims

03/04/2020 **Judgment Plus Interest** (Judicial Officer: Allf, Nancy)
Debtors: Daniel E. Wolfus (Plaintiff)
Creditors: Richard D. Moritz (Defendant), Bradley J Blacketor (Defendant), Timothy Haddon (Defendant), Richard Sawchak (Defendant), Frank Yu (Defendant), John W Sheridan (Defendant), Roger A Newell (Defendant), Rodney D Knutson (Defendant)
Judgment: 03/04/2020, Docketed: 03/05/2020
Total Judgment: 5,119.30

HEARINGS

09/26/2017 **Motion to Associate Counsel** (3:00 AM) (Judicial Officer: Allf, Nancy)
Events: 08/24/2017 Motion to Associate Counsel
Motion to Associate Counsel (Holly Stein Sollod)

MINUTES

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

10/24/2017	**Motion to Associate Counsel** (3:00 AM) (Judicial Officer: Allf, Nancy) *Defendant Keneth A Brunk's Motion to Associate Counsel* Granted; Journal Entry Details: *COURT FINDS after review that Defendant Kenneth A. Brunk filed a Motion to Associate Counsel (Motion) and a Hearing was set for October 24, 2017 on Chambers Calendar. COURT FURTHER FINDS after review the Motion seeks to associate Eric B. Liebman, Esq., Rebecca DeCook, Esq. and Rachel E. Yeates, Esq., all from the law firm of Moye White LLP; the Motion is in compliance with SCR 42 and no oppositions have been filed. COURT ORDERS for good cause appearing and after review that Defendant Kenneth A. Brunk s Motion to Associate Counsel is GRANTED; the Court has reviewed the Motion, which provides cause for granting the Motion; Hearing set on CHAMBERS CALENDAR on October 24, 2017 is VACATED. Movant to submit the appropriate orders. CLERK'S NOTE: A copy of this minute order was faxed to: James R. Christensen, Esq. (702-272-0415) Santoro Whitmire (702-948-8773) Moye White LLP (303-292-4510) Greenberg Traurig, LLP (702-792-9002) Holland & Hart LLP (702-669-4650, 303-2958261) ;*
11/01/2017	**Motion to Dismiss** (10:30 AM) (Judicial Officer: Allf, Nancy) *D&O Defendant's Motion to Dismiss Amended Complaint* Continued for Chambers Decision;
11/01/2017	**Motion to Dismiss** (10:30 AM) (Judicial Officer: Allf, Nancy) *Motion to Dismss and Joinder to D&O Defendants' Motion to Dismiss Amended Complaint* Continued for Chambers Decision;
11/01/2017	**Motion to Dismiss** (10:30 AM) (Judicial Officer: Allf, Nancy) *Motion to Dismiss of Kenneth A Brunk and Joinder in D&O Defendant's Motion to Dismiss Amended Complaint* Continued for Chambers Decision;
11/01/2017	**Joinder** (10:30 AM) (Judicial Officer: Allf, Nancy) *Joinder in D&O Defendant's Motion to Dismiss Amended Complaint and Supplemental Motion to Dismiss of Kenneth A Brunk* Continued for Chambers Decision;
11/01/2017	**All Pending Motions** (10:30 AM) (Judicial Officer: Allf, Nancy) Matter Heard; Journal Entry Details: *D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT...MOTION TO DISMISS AND JOINDER TO D&O DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT...MOTION TO DISMISS OF KENNETH A BRUNK AND JOINDER IN D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT...JOINDER IN D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT AND SUPPLEMENTAL MOTION TO DISMISS OF KENNETH A BRUNK Arguments by Mr. Cassity, Mr. Ferrario, and Mr. Leadman regarding the merits of, and opposition to, the pending motions. COURT ORDERED, D&O Defendant's Motion to Dismiss Amended Complaint, Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Amended Complaint, Motion to Dismiss of Kenneth A Brunk and Joinder in D&O Defendant's Motion to Dismiss Amended Complaint, andJoinder in D&O Defendant's Motion to Dismiss Amended Complaint and Supplemental Motion to Dismiss of Kenneth A Brunk CONTINUED to chambers calendar for decision, Court has concerns regarding jurisdictional arguments and will reread the case law. 11/21/2017 CHAMBERS D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT; MOTION TO DISMISS AND JOINDER TO D&O DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT; MOTION TO DISMISS OF KENNETH A BRUNK AND JOINDER IN D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT; AND JOINDER IN D&O DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT AND SUPPLEMENTAL MOTION TO DISMISS OF KENNETH A BRUNK ;*
11/21/2017	**Decision** (3:00 AM) (Judicial Officer: Allf, Nancy) **11/21/2017, 11/29/2017** *Decision: D&O Defendant's Motion to Dismiss Amended Complaint; Motion to Dismss and*

Joinder to D&O Defendants' Motion to Dismiss Amended Complaint; Motion to Dismiss of Kenneth A Brunk and Joinder in D&O Defendant's Motion to Dismiss Amended Complaint; and Joinder in D&O Defendant's Motion to Dismiss Amended Complaint and Supplemental Motion to Dismiss of Kenneth A Brunk
Matter Continued;
Minute Order - No Hearing Held;
Journal Entry Details:
COURT FINDS after review on August 25, 2017, Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell, and Rodney D. Knutson filed a Motion to Dismiss Amended Complaint. Defendants Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID II, LLC, and HCP-MID, LLC filed a Motion to Dismiss and Joinder to D&O Defendants Motion to Dismiss Amended Complaint. Defendant Kenneth A. Brunk filed a Motion to Dismiss of Kenneth A. Brunk and Joinder in D&O Defendants Motion to Dismiss Amended Complaint. COURT FURTHER FINDS after review these matters came on for hearing on November 1, 2017; James R. Christensen, Esq. appearing for Plaintiff Daniel E. Wolfus (Plaintiff); Robert J. Cassity, Esq. and David J. Freeman, Esq. appearing for the D&O Defendants; Mark E. Ferrario, Esq. and Christopher R. Miltenberger, Esq. appearing for the Hale Defendants; and Eric B. Liebman, Esq. and Jason D. Smith, Esq. appearing for Defendant Kenneth A. Brunk (all collectively as Defendants). COURT FURTHER FINDS after review Defendants argue the Court lacks subject matter jurisdiction because Plaintiff s claims are derivative, and under the Business Corporations Act, the Supreme Court of British Columbia has exclusive jurisdiction over derivative claims against a Canadian corporation. Moreover, Defendants argue that due to the Midway bankruptcy action the liquidating trustee has the sole right to assert derivative claims. Plaintiff counters that under the Direct Harm Test enumerated in Parametric Sound Corp., Plaintiff brings direct claims because Plaintiff individually suffered harm and any recovery will remit to Plaintiff and his assignors, not to Midway. See Parametric Sound Corp. v. Eighth Judicial Dist. Court in & for Cty. of Clark, 133 Nev. Adv. Op. 59, 401 P.3d 1100 (Nev. 2017). COURT FURTHER FINDS after review Plaintiff s claims are derivative in nature. Though Plaintiff frames his damages as arising from the exercise of his stock options and corresponding purchase of Midway shares, reading the Complaint as a whole indicates the alleged harm suffered comes from his shares becoming valueless after acquiring them. Claims premised on harm caused by the reduction in value of shares of stock are inherently derivative as the reduction arises from the reduction of the entire value of the corporation, and such an equal injury is not a specific direct harm to each shareholder individually. See id. THEREFORE COURT ORDERS for good cause appearing and after review Defendants Motions to Dismiss and Joinders thereto are GRANTED. The Complaint is dismissed, and Plaintiff is granted leave to amend. COURT FURTHER ORDERS for good cause appearing and after review Defendants are directed to prepare and submit an Order with detailed findings of fact and conclusions of law, allowing Plaintiff to review the Order as to form before submitting. After submission, Plaintiff will have 30 days from the Notice of Entry of Order to file a Second Amended Complaint. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve.;
Matter Continued;
Minute Order - No Hearing Held;
Journal Entry Details:
COURT FINDS after review on November 1, 2017 the Court heard argument on the Motions to Dismiss and Joinders thereto. The Court took the matters under submission and set a Status Check for November 21, 2017 on Chambers Calendar for the Court to release a Decision and Order. COURT ORDERS for good cause appearing and after review the Status Check set for Chambers Calendar on November 21, 2017, CONTINUED to December 5, 2017 on Chambers Calendar; Court will either release a Decision and Order by the December 5, 2017 Status Check, or provide a prospective future date to expect it. CONTINUED TO: 12/5/2017 (CHAMBERS) CLERK'S NOTE: A copy of this minute order was faxed to: James R. Christensen, Esq. (702-272-0415) Santoro Whitmire (702-948-8773) Moye White LLP (303-292-4510) Greenberg Traurig, LLP (702-792-9002) Holland & Hart LLP (702-669-4650, 303-2958261);

11/28/2017 **Minute Order** (3:00 AM) (Judicial Officer: Allf, Nancy)
Minute Order: Motion to Associate Counsel set 12/6/2017 GRANTED and VACATED
Minute Order - No Hearing Held; Minute Order: Motion to Associate Counsel set 12/6/2017 GRANTED and VACATED
Journal Entry Details:

COURT FINDS after review on October 24, 2017 Plaintiff Daniel E. Wolfus filed a Motion to

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

12/06/2017 *CANCELED* **Motion to Associate Counsel** (9:30 AM) (Judicial Officer: Allf, Nancy)
Vacated - Previously Decided

05/09/2018 **Motion to Dismiss** (10:30 AM) (Judicial Officer: Allf, Nancy)
Motion to Dismiss and Joinder to D&O Defendants' Motionto Dismiss Second Amended Complaint
Granted in Part;

05/09/2018 **Motion to Dismiss** (10:30 AM) (Judicial Officer: Allf, Nancy)
D&O Defendant's Motion to Dismiss Second Amended Complaint
Granted in Part;

05/09/2018 **Countermotion** (10:30 AM) (Judicial Officer: Allf, Nancy)
Kenneth A. Brunk's Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants' Motion to Dismiss Second Amended Complaint
Granted in Part;

05/09/2018 **All Pending Motions** (10:30 AM) (Judicial Officer: Allf, Nancy)

MINUTES

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

SCHEDULED HEARINGS

CANCELED **Status Check** (05/22/2018 at 3:00 AM) (Judicial Officer: Allf, Nancy)
Vacated
Status Check: Decision on D&O Defendant's Motion to Dismiss Second Amended Complaint; Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Second Amended Complaint and Kenneth A. Brunk's Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants' Motion to Dismiss Second Amended Complaint

05/18/2018 **Minute Order** (3:00 AM) (Judicial Officer: Allf, Nancy)

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

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

Minute Order - No Hearing Held;

Journal Entry Details:

COURT FINDS after review on March 16, 2018, Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell, and Rodney D. Knutson filed D&O Defendants Motion to Dismiss Second Amended Complaint. Defendants Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID II, LLC, and HCP-MID, LLC filed a Motion to Dismiss and Joinder to D&O Defendants Motion to Dismiss Second Amended Complaint. Defendant Kenneth A. Brunk filed Kenneth A. Brunk s Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants Motion to Dismiss Second Amended Complaint. COURT FURTHER FINDS after review these matters came on for hearing on May 9, 2018, at which counsel presented argument. The Court being apprised of the matters and having considered the arguments of counsel, as well as the pleadings and papers on file, the matter is deemed submitted. COURT FURTHER FINDS after review the parties do not dispute that the Court has general jurisdiction over Defendant Frank Yu. COURT FURTHER FINDS after review the first cause of action is for Securities Fraud. Cal. Corp. Code 25401 provides: It is unlawful for any person to offer or sell a security in this state, or to buy or offer to buy a security in this state, by means of any written or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading. COURT FURTHER FINDS after review Cal. Corp. Code 25017(a) provides: Sale or sell includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. Sale or sell includes any exchange of securities and any change in the rights, preferences, privileges, or restrictions of or on outstanding securities. Further, Cal. Corp. Code 25017(e) provides: Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, includes an offer and sale of the other security only at the time of the offer or sale of the warrant or right or convertible security; but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of securities pursuant thereto is an offer or sale. COURT FURTHER FINDS after review under the plain language of Cal. Corp. Code 25017(e), neither the exercise of the right to purchase shares nor the issuance of securities pursuant thereto is an offer or sale. The sale or offer is deemed to occur at the time of the offer or sale of the right to purchase the share. Though Plaintiff contends this provision relates to stock warrants, stock warrants are listed separately from rights to purchase and is separated by the word or, implying that the provision applies to both warrants and rights to purchase shares. Plaintiff claims the alleged misrepresentations, namely the 2013 and 2014 Material Facts impose liability on Defendants under Cal. Corp. Code 25401 for the alleged misleading sale. However, since the application of Cal. Corp. Code 25017(e) indicates the sale occurred in 2009 when the stock options were issued, and there are no allegations that the sale in 2009 contained any untrue statement of a material fact or an omission of the same. Accordingly, the Securities Fraud cause of action fails as a matter of law and is dismissed with prejudice as to all Defendants. COURT FURTHER FINDS after review the remaining causes of action Breach of Fiduciary Duty, Aiding and Abetting a Breach of Fiduciary Duty, Fraud, and Negligent Misrepresentation are sufficiently pled in the Second Amended Complaint. COURT FURTHER FINDS after review the Court finds it appropriate to determine the sufficiency of personal jurisdiction against certain remaining Defendants through jurisdictional discovery. COURT FURTHER FINDS after review because the parties do not dispute that the Court has general jurisdiction over Defendant Frank Yu, there will be no jurisdictional discovery as to determining the sufficiency of personal jurisdiction over Mr. Yu. COURT FURTHER FINDS after review Plaintiff does not oppose Defendants contention that the Court lacks personal jurisdiction over INV-MID, LLC, EREF-MID II, LLC, and HCP-MID, LLC. Further, the Second Amended Complaint alleges that these Defendants are each Delaware LLCs with principal places of business in New York. Second Am. Compl. 20. Accordingly, as there are no allegations nor showings that the Court has personal jurisdiction over these Defendants, the Complaint is dismissed with prejudice as to INV-MID, LLC, EREF-MID II, LLC, and HCP-MID, LLC. COURT ORDERS for good cause appearing and after review the parties may conduct jurisdictional discovery related to the Defendants not already addressed by this minute Order: Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Roger A. Newell, Rodney D. Knutson, Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, and Kenneth A. Brunk. Jurisdictional discovery is limited to each of these Defendants contacts with Nevada related to the planning, preparation, and issuance of the SEC filings and Press Releases that predicate the Breach of Fiduciary Duty, Aiding and Abetting a Breach of Fiduciary Duty, Fraud, and Negligent Misrepresentation causes of action. COURT FURTHER ORDERS for good cause

appearing and after review Plaintiff is limited to four sets of ten interrogatories per Defendant, and answers must be served within ten days of service of the interrogatories. COURT FURTHER ORDERS for good cause appearing and after review, Plaintiff is limited to four depositions lasting two hours each, per Defendant, which may occur upon not less than ten days notice. These discovery mechanisms are independent of the NRCP allowances for general discovery, yet limited to the jurisdictional issues enumerated here. The parties will initially have 90 days to complete jurisdictional discovery, with jurisdictional discovery closing August 19, 2018. Status Check SET for July 26, 2018 at 11:00 a.m. to determine the status of jurisdictional discovery. COURT FURTHER ORDERS for good cause appearing and after review, Mr. Cassity is to prepare and submit the Order in compliance with EDCR 7.21, allowing each other party the opportunity to review and approve the form prior to submission. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm;

05/22/2018 *CANCELED* **Status Check** (3:00 AM) (Judicial Officer: Allf, Nancy)
Vacated
Status Check: Decision on D&O Defendant's Motion to Dismiss Second Amended Complaint; Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Second Amended Complaint and Kenneth A. Brunk's Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants' Motion to Dismiss Second Amended Complaint

06/04/2018 **Minute Order** (3:00 AM) (Judicial Officer: Allf, Nancy)
*Minute Order: Disclosure *Entered in Error**
Minute Order - No Hearing Held; Minute Order: Disclosure *ENTERED IN ERROR*
Journal Entry Details:
As the minute order from case A773230 CIMA Group LLC vs. CWNevada, LLC dated 6/5/2018 was entered in this case in error, Minutes have been AMENDED and REMOVED from this case. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm;

06/21/2018 **Motion to Stay** (10:00 AM) (Judicial Officer: Allf, Nancy)
Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court on Order Shortening Time
Granted;

06/21/2018 **Joinder** (10:00 AM) (Judicial Officer: Allf, Nancy)
Kenneth A. Brunk's Joinder in Support of D&O Defendants' Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court and Ex Parte Application for Order Shortening Time
Matter Heard;

06/21/2018 **Joinder** (10:00 AM) (Judicial Officer: Allf, Nancy)
Joinder to Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court
Matter Heard;

06/21/2018 **All Pending Motions** (10:00 AM) (Judicial Officer: Allf, Nancy)

MINUTES
Matter Heard;
Journal Entry Details:
MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF DEFENDANTS' WRIT PETITION TO THE NEVADA SUPREME COURT ON ORDER SHORTENING TIME...KENNETH A. BRUNK'S JOINDER IN SUPPORT OF D&O DEFENDANTS' MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF DEFENDANTS' WRIT PETITION TO THE NEVADA SUPREME COURT AND EX PARTE APPLICATION FOR ORDER SHORTENING TIME...JOINDER TO MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF DEFENDANTS WRIT PETITION TO THE NEVADA SUPREME COURT Eric B. Liebman, Esq., Rebecca B. DeCook, Esq., and Samuel T. Rees, Esq. present telephonically. Arguments by Mr. Cassity, Mr. Smith, and Mr. Christensen regarding the merits of and opposition to the motion. Court stated its findings and ORDERED, Motion to Stay Proceedings Pending Resolution of Defendants' Writ Petition to the Nevada Supreme Court on Order Shortening Time GRANTED, status check SET, Court will require status

reports no later than September 21, 2018, parties are required to notify the Court if writ is accepted or if there is additional briefing or IF writ is denied. COURT FURTHER ORDERED, motions set on July 5, 2018 and status check on July 26, 2018 VACATED. Mr. Cassidy to prepare the order and submit it to Plaintiff's counsel for approval. 9/25/2018 (CHAMBERS) STATUS CHECK: STATUS REPORT;

SCHEDULED HEARINGS

Status Check (09/25/2018 at 3:00 AM) (Judicial Officer: Allf, Nancy)
09/25/2018, 12/04/2018, 01/22/2019, 03/26/2019, 06/04/2019, 10/15/2019
Status Check: Status Report

07/05/2018 *CANCELED* **Motion for Discovery** (10:00 AM) (Judicial Officer: Allf, Nancy)
Vacated
Plaintiff's Motion for Additional Discovery on Order Shortening Time

07/05/2018 *CANCELED* **Motion for Discovery** (10:00 AM) (Judicial Officer: Allf, Nancy)
Vacated
Plaintiff's Motion for Additional Discovery; Order Shortening Time

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

09/25/2018 **Status Check** (3:00 AM) (Judicial Officer: Allf, Nancy)
09/25/2018, 12/04/2018, 01/22/2019, 03/26/2019, 06/04/2019, 10/15/2019
Status Check: Status Report
Matter Continued;
Matter Continued;
Matter Continued;
Matter Continued;
Matter Continued;
Minute Order - No Hearing Held;
Matter Continued;
Matter Continued;
Matter Continued;
Matter Continued;
Matter Continued;
Minute Order - No Hearing Held;
Journal Entry Details:

COURT FINDS after review that on June 26, 2018 the Court entered the Order Granting Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court. Status Check was set for September 25, 2018 on Chambers Calendar to review the status of the Writ Petition and the parties were ordered to file Status Reports with the Court on or before September 21, 2018. COURT FURTHER FINDS after review that Plaintiff s Status Report was filed on September 20, 2018 and Defendant s Status Report was filed on September 21, 2018 (collectively, the Status Reports). The Status Reports indicate that the time for an answer to the Writ Petition was extended to September 26, 2018, and the time for Defendant to file a reply in support of the Writ Petition was extended to 30 days from the date of service of the answer. The Status Reports further indicate that a stay of these proceedings pending resolution of the Writ Petition is still warranted, so the Status Check was continued to December 4, 2018. COURT FURTHER FINDS after review that no Status Reports were filed prior to the December 4, 2018 Status Check, so the Status Check was continued to January 22, 2019 for the parties to file a Status Report. COURT FURTHER FINDS after review that Plaintiff s Status Report was filed with the Court on January 17, 2019 and Defendants Status Report was filed with the Court on January 18, 2019 indicating that the Writ Petition is pending before the Nevada Supreme Court and that the stay is still warranted. The Status Check was continued to March 26, 2019 for the parties to file a Status Report. COURT FURTHER FINDS after review that Plaintiff s Status Report was filed with the Court on March 21, 2019 and Defendant s Status Report was filed with the Court on March 22, 2019. Both Status Reports indicate that the Writ Petition remains pending before the Nevada Supreme Court and that oral argument is scheduled for April 2, 2019, at 10:30 a.m. The Status Check was continued to June 4, 2019 for the parties to file a Status Report. COURT FURTHER FINDS after review that the Defendant s Status Report was filed on May 30, 2019 and the Plaintiff s Status Report was filed on May 31, 2019. The status reports indicate that the Writ

Petition remains pending before the Nevada Supreme Court and that the stay in this case is still warranted. COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for Chambers Calendar on June 4, 2019 is hereby CONTINUED to October 15, 2019 on CHAMBERS CALENDAR to review the status of the Writ Petition. The parties are ordered to file Status Reports with the Court on or before October 11, 2019. CONTINUED TO: 10/15/2019 (CHAMBERS) CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 6/4/2019;

Matter Continued;
Matter Continued;
Matter Continued;
Matter Continued;
Matter Continued;
Minute Order - No Hearing Held;
Journal Entry Details:

COURT FINDS after review that on June 26, 2018 the Court entered the Order Granting Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court. Status Check was set for September 25, 2018 on Chambers Calendar to review the status of the Writ Petition and the parties were ordered to file Status Reports with the Court on or before September 21, 2018. COURT FURTHER FINDS after review that Plaintiff s Status Report was filed on September 20, 2018 and Defendant s Status Report was filed on September 21, 2018 (collectively, the Status Reports). The Status Reports indicate that the time for an answer to the Writ Petition was extended to September 26, 2018, and the time for Defendant to file a reply in support of the Writ Petition was extended to 30 days from the date of service of the answer. The Status Reports further indicate that a stay of these proceedings pending resolution of the Writ Petition is still warranted, so the Status Check was continued to December 4, 2018. COURT FURTHER FINDS after review that no Status Reports were filed prior to the December 4, 2018 Status Check, so the Status Check was continued to January 22, 2019 for the parties to file a Status Report. COURT FURTHER FINDS after review that Plaintiff s Status Report was filed with the Court on January 17, 2019 and Defendants Status Report was filed with the Court on January 18, 2019 indicating that the Writ Petition is pending before the Nevada Supreme Court and that the stay is still warranted. The Status Check was continued to March 26, 2019 for the parties to file a Status Report. COURT FURTHER FINDS after review that Plaintiff s Status Report was filed with the Court on March 21, 2019 and Defendant s Status Report was filed with the Court on March 22, 2019. Both Status Reports indicate that the Writ Petition remains pending before the Nevada Supreme Court and that oral argument is scheduled for April 2, 2019, at 10:30 a.m. COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for Chambers Calendar on March 26, 2019 is hereby CONTINUED to June 4, 2019 on CHAMBERS CALENDAR to review the status of the Writ Petition. The parties are ordered to file Status Reports with the Court on or before May 31, 2019. CONTINUED TO: 6/4/2019 (CHAMBERS) CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm 3/26/2019;

Matter Continued;
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Matter Continued;
Minute Order - No Hearing Held;
Journal Entry Details:

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

pending before the Nevada Supreme Court and that the stay is still warranted. COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for Chambers Calendar on January 22, 2019 is hereby CONTINUED to March 26, 2019 on CHAMBERS CALENDAR to review the status of the Writ Petition. The parties are ordered to file Status Reports with the Court on or before March 22, 2019. CONTINUED TO: 3/26/2019 (CHAMBERS) CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm;
Matter Continued;
Matter Continued;
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Matter Continued;
Minute Order - No Hearing Held;
Journal Entry Details:
COURT FINDS after review that on June 26, 2018 the Court entered the Order Granting Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court. Status Check was set for September 25, 2018 on Chambers Calendar to review the status of the Writ Petition and the parties were ordered to file Status Reports with the Court on or before September 21, 2018. COURT FURTHER FINDS after review that Plaintiff s Status Report was filed on September 20, 2018 and Defendant s Status Report was filed on September 21, 2018 (collectively, the Status Reports). The Status Reports indicate that the time for an answer to the Writ Petition was extended to September 26, 2018, and the time for Defendant to file a reply in support of the Writ Petition was extended to 30 days from the date of service of the answer. The Status Reports further indicate that a stay of these proceedings pending resolution of the Writ Petition is still warranted, so the Status Check was continued to December 4, 2018. COURT FURTHER FINDS after review that no Status Reports were filed prior to the December 4, 2018 Status Check. COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for Chambers Calendar on December 4, 2018 is hereby CONTINUED to January 22, 2019 on CHAMBERS CALENDAR to review the status of the Writ Petition. The parties are ordered to file Status Reports with the Court on or before January 18, 2019. CONTINUED TO: 1/22/2019 (CHAMBERS) CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm;
Matter Continued;
Matter Continued;
Matter Continued;
Matter Continued;
Matter Continued;
Minute Order - No Hearing Held;
Journal Entry Details:
COURT FINDS after review that on June 26, 2018 the Court entered the Order Granting Motion to Stay Proceedings Pending Resolution of Defendants Writ Petition to the Nevada Supreme Court. Status Check was set for September 25, 2018 on Chambers Calendar to review the status of the Writ Petition and the parties were ordered to file Status Reports with the Court on or before September 21, 2018. COURT FURTHER FINDS after review that Plaintiff s Status Report was filed on September 20, 2018 and Defendant s Status Report was filed on September 21, 2018 (collectively, the Status Reports). The Status Reports indicate that the time for an answer to the Writ Petition was extended to September 26, 2018, and the time for Defendant to file a reply in support of the Writ Petition was extended to 30 days from the date of service of the answer. The Status Reports further indicate that a stay of these proceedings pending resolution of the Writ Petition is still warranted. COURT ORDERS for good cause appearing and after review that the STATUS CHECK set for Chambers Calendar on September 25, 2018 is hereby CONTINUED to December 4, 2018 on CHAMBERS CALENDAR to review the status of the Writ Petition. The parties are ordered to file Status Reports with the Court on or before November 30, 2018. CONTINUED TO 12/4/2018 (CHAMBERS) CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Nicole McDevitt, to all registered parties for Odyssey File & Serve. /nm;

DATE	FINANCIAL INFORMATION	
Defendant Brunk, Kenneth A.		
Total Charges		226.50
Total Payments and Credits		226.50
Balance Due as of 4/2/2020		**0.00**
Defendant Hale, Martin M, Jr.		

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

Defendant Moritz, Richard D.

Total Charges	520.50
Total Payments and Credits	520.50
Balance Due as of 4/2/2020	**0.00**

Plaintiff Wolfus, Daniel E.

Total Charges	396.00
Total Payments and Credits	396.00
Balance Due as of 4/2/2020	**0.00**

Plaintiff Wolfus, Daniel E.

Appeal Bond Balance as of 4/2/2020	**500.00**

A-17-756971-C

Department 10

DISTRICT COURT CIVIL COVER SHEET

Clark County, Nevada

Case No. _____
(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
DANIEL E. WOLFUS	KENNETH A. BRUNK, ET.AL
Attorney (name/address/phone):	Attorney (name/address/phone):
James R. Christensen	
601 S.6th Street, Las Vegas, NV 89101	
(702) 272-0406	

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

Civil Case Filing Types

Real Property		Torts	
Landlord/Tenant	**Negligence**	**Other Torts**	
☐ Unlawful Detainer	☐ Auto	☐ Product Liability	
☐ Other Landlord/Tenant	☐ Premises Liability	☐ Intentional Misconduct	
Title to Property	☐ Other Negligence	☐ Employment Tort	
☐ Judicial Foreclosure	**Malpractice**	☐ Insurance Tort	
☐ Other Title to Property	☐ Medical/Dental	■ Other Tort	
Other Real Property	☐ Legal		
☐ Condemnation/Eminent Domain	☐ Accounting		
☐ Other Real Property	☐ Other Malpractice		

Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate *(select case type and estate value)*	**Construction Defect**	**Judicial Review**
☐ Summary Administration	☐ Chapter 40	☐ Foreclosure Mediation Case
☐ General Administration	☐ Other Construction Defect	☐ Petition to Seal Records
☐ Special Administration	**Contract Case**	☐ Mental Competency
☐ Set Aside	☐ Uniform Commercial Code	**Nevada State Agency Appeal**
☐ Trust/Conservatorship	☐ Building and Construction	☐ Department of Motor Vehicle
☐ Other Probate	☐ Insurance Carrier	☐ Worker's Compensation
Estate Value	☐ Commercial Instrument	☐ Other Nevada State Agency
☐ Over $200,000	☐ Collection of Accounts	**Appeal Other**
☐ Between $100,000 and $200,000	☐ Employment Contract	☐ Appeal from Lower Court
☐ Under $100,000 or Unknown	☐ Other Contract	☐ Other Judicial Review/Appeal
☐ Under $2,500		

Civil Writ		Other Civil Filing
Civil Writ		**Other Civil Filing**
☐ Writ of Habeas Corpus	☐ Writ of Prohibition	☐ Compromise of Minor's Claim
☐ Writ of Mandamus	☐ Other Civil Writ	☐ Foreign Judgment
☐ Writ of Quo Warrant		☐ Other Civil Matters

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

6/13/17
Date

Signature of initiating party or representative

See other side for family-related case filings.

BUSINESS COURT CIVIL COVER SHEET

Clark County, Nevada

Case No. _____

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Daniel E. Wolfus	Kenneth A. Brunk, et al.,
Attorney (name/address/phone):	Attorney (name/address/phone):
James R. Christensen, Esq. (NV Bar No. 3861 601 S. Sixth Street, Las Vegas, NV 89101 702-272-0406;	Mark E. Ferrario, Esq. (NV Bar 1625 Christopher R. Milgengerger NV Bar 10153 3773 Howard Hughes Pkwy., 400 N Las Vegas, NV 89169; 7002-792-3773

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

☐ Arbitration Requested

Civil Case Filing Types

Real Property

Landlord/Tenant
- ☐ Unlawful Detainer
- ☐ Other Landlord/Tenant

Title to Property
- ☐ Judicial Foreclosure
- ☐ Other Title to Property

Other Real Property
- ☐ Condemnation/Eminent Domain
- ☐ Other Real Property

Construction Defect & Contract

Construction Defect
- ☐ Chapter 40
- ☐ Other Construction Defect

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

Torts

Negligence
- ☐ Auto
- ☐ Premises Liability
- ☐ Other Negligence

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

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

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

Judicial Review/Appeal/Other Civil Filing

Judicial Review
- ☐ Foreclosure Mediation Case

Appeal Other
- ☐ Appeal from Lower Court

Other Civil Filing
- ☐ Foreign Judgment
- ☐ Other Civil Matters

Business Court Filing Types

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

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

August 2, 2017
Date

/s/ Christopher R. Miltenberger
Signature of initiating party or representative

Electronically Filed
3/4/2020 2:02 PM
Steven D. Grierson
CLERK OF THE COURT

JUDG

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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 **JUDGMENT** Electronic Filing Case

The Court, having issued a *Notice of Entry of Order Granting Defendants' Motions to Dismiss Second Amended Complaint* on January 13, 2020, Defendants Richard D. Moritz,

Case Number: A-17-756971-B

Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson having filed a *Verified Memorandum of Costs* pursuant to NRS 18.005 and 18.110 on January 15, 2020, and Plaintiff Daniel E. Wolfus having filed no motion to retax or settle the costs, and good cause appearing,

IT IS ORDERED, ADJUDGED, AND DECREED that Judgment is entered in favor of Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson and against Plaintiff Daniel E. Wolfus in the amount of $5,119.30. Prejudgment interest and post-judgment interest shall accrue as prescribed under Nevada law.

DATED this 3 day of March 2020.

Nancy L Allf
DISTRICT COURT JUDGE

Submitted by:

Robert J. Cassity, Esq. (9779)
David J. Freeman, Esq. (10045)
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3/5/2020 10:40 AM
Steven D. Grierson
CLERK OF THE COURT

NJUD

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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 JUDGMENT

Case Number: A-17-756971-B

PLEASE TAKE NOTICE that a Judgment was entered on the 4th day of March 2020. A copy is attached.

DATED this 5th day of March 2020.

By */s/ David Freeman*

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of March 2020, a true and correct copy of the foregoing **NOTICE OF ENRTY OF JUDGMENT** 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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miltenbergerc@gtlaw.com

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

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

Eric B. Liebman, Esq.
Rebecca DeCook, Esq.
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1400 16th Street
Denver, CO 80202

Attorneys for Kenneth A. Brunk

/s/ Julie Linton
An Employee of Holland & Hart LLP

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3/4/2020 2:02 PM
Steven D. Grierson
CLERK OF THE COURT

JUDG

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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 **JUDGMENT** Electronic Filing Case

The Court, having issued a *Notice of Entry of Order Granting Defendants' Motions to Dismiss Second Amended Complaint* on January 13, 2020, Defendants Richard D. Moritz,

Case Number: A-17-756971-B

Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson having filed a *Verified Memorandum of Costs* pursuant to NRS 18.005 and 18.110 on January 15, 2020, and Plaintiff Daniel E. Wolfus having filed no motion to retax or settle the costs, and good cause appearing,

IT IS ORDERED, ADJUDGED, AND DECREED that Judgment is entered in favor of Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell and Rodney D. Knutson and against Plaintiff Daniel E. Wolfus in the amount of $5,119.30. Prejudgment interest and post-judgment interest shall accrue as prescribed under Nevada law.

DATED this 3 day of March 2020.

Nancy L Allf
DISTRICT COURT JUDGE

Submitted by:

Robert J. Cassity, Esq. (9779)
David J. Freeman, Esq. (10045)
HOLLAND & HART LLP
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Electronically Filed
1/10/2020 5:57 PM
Steven D. Grierson
CLERK OF THE COURT

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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.

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 SECOND AMENDED COMPLAINT** Electronic Filing Case

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

Case Number: A-17-756971-B

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

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

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

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

The Court having carefully considered the D&O Defendants' Motion, Hale Joinder, Brunk Joinder, Plaintiff's Consolidated Memorandum of Points and Authorities in Opposition to Motions to Dismiss, the Defendants' respective reply briefs 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 having reviewed the Nevada Supreme Court's Order Granting Petition for Writ of Prohibition, having been served with the Writ of Prohibition, and in accordance with the requirements of the Writ of Prohibition, issues the following Order Granting Defendants' Motions to Dismiss:

FACTUAL ALLEGATIONS

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

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

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

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

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

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.* ¶ 27.

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

8. 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* SAC ¶ 30), including the Pan Mine (*see id.* ¶ 32).

9. 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.* ¶ 35.

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

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

12. Plaintiff alleges that, by either mid or late 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 2011 Pan Mine Study, but the Defendants did not inform investors of the material impact on cash flows as a result of those differences. *Id.* ¶ 65.

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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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).

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

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

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

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

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

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

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

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

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

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

the court must consider: "(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)?" *Id.* (quoting *Tooley*, 845 A.2d at 1033).

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

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

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

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

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

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

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

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

36. Having determined that Wolfus's claims against the Directors are derivative in nature, as allegations of mismanagement which harmed Midway directly, the Court concludes the law of British Columbia, where Midway was incorporated, controls Wolfus's claims. *Vaughn v. Le nnt'l, Inc.*, 94 Cal. Rptr. 3d 166, 175 (Ct. App. 2009) ("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." (internal quotation marks omitted)).

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

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

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

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

ORDER

Based on the foregoing, and good cause appearing,

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

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

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

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

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

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

IT IS SO ORDERED.

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

Nancy L Allf
DISTRICT COURT JUDGE

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 SECOND AMENDED COMPLAINT

Case Number: A-17-756971-B

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

DATED this 13th day of January 2020.

By */s/ Robert J. Cassity*
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CERTIFICATE OF SERVICE

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

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

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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 SECOND AMENDED COMPLAINT** Electronic Filing Case

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

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

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

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

The Court having carefully considered the D&O Defendants' Motion, Hale Joinder, Brunk Joinder, Plaintiff's Consolidated Memorandum of Points and Authorities in Opposition to Motions to Dismiss, the Defendants' respective reply briefs 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 having reviewed the Nevada Supreme Court's Order Granting Petition for Writ of Prohibition, having been served with the Writ of Prohibition, and in accordance with the requirements of the Writ of Prohibition, issues the following Order Granting Defendants' Motions to Dismiss:

FACTUAL ALLEGATIONS

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

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

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

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

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

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.* ¶ 27.

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

8. 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* SAC ¶ 30), including the Pan Mine (*see id.* ¶ 32).

9. 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.* ¶ 35.

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

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

12. Plaintiff alleges that, by either mid or late 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 2011 Pan Mine Study, but the Defendants did not inform investors of the material impact on cash flows as a result of those differences. *Id.* ¶ 65.

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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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).

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

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

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

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

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

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

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

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

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

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

the court must consider: "(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)?" *Id.* (quoting *Tooley*, 845 A.2d at 1033).

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

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

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

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

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

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

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

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

36. Having determined that Wolfus's claims against the Directors are derivative in nature, as allegations of mismanagement which harmed Midway directly, the Court concludes the law of British Columbia, where Midway was incorporated, controls Wolfus's claims. *Vaughn v. Le nnt'l, Inc.*, 94 Cal. Rptr. 3d 166, 175 (Ct. App. 2009) ("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." (internal quotation marks omitted)).

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

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

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

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

ORDER

Based on the foregoing, and good cause appearing,

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

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

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

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

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

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

IT IS SO ORDERED.

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

Nancy L Allf
DISTRICT COURT JUDGE

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 **ORDER REGARDING DEFENDANTS' MOTIONS TO DISMISS SECOND AMENDED COMPLAINT** Electronic Filing Case

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

Case Number: A-17-756971-B

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

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

Having carefully considered the D&O Defendants' Motion, Hale Joinder, Brunk Joinder, Plaintiff's *Consolidated Memorandum of Points and Authorities in Opposition to Motions to Dismiss*, the Defendants' respective reply briefs 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 decides the submitted issues as follows:

FACTUAL ALLEGATIONS

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

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

CONCLUSIONS OF LAW

17. 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).

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

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

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

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

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

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

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

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

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

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

27. The Court may exercise general personal jurisdiction over a defendant when the defendant's contacts with the State of Nevada are so "substantial" or "continuous and systematic"

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

28. Alternatively, the Court may exercise specific personal jurisdiction over a defendant where: (1) purposefully availed itself of the privilege of acting within the state or of causing important consequences in the state; (2) the cause of action arises from defendant's purposeful contacts with the forum state; and (3) those contacts with the forum state were substantial enough 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).

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

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

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

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

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

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

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35. The Court concludes that the parties may conduct jurisdictional discovery related to Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Roger A. Newell, Rodney D. Knutson, Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, and Kenneth A. Brunk. Jurisdictional discovery is limited to each of these Defendants' contacts with Nevada related to the planning, preparation, and issuance of the SEC filings and Press Releases that predicate the Breach of Fiduciary Duty, Aiding and Abetting a Breach of Fiduciary Duty, Fraud, and Negligent Misrepresentation causes of action.

ORDER

Based on the foregoing, and good cause appearing,

IT IS HEREBY ORDERED that Defendants' Motion is GRANTED as to Plaintiff's Claim for Violation of California Securities Act, which is hereby DISMISSED with prejudice as to all Defendants.

IT IS FURTHER ORDERED that Defendants' Motion is DENIED as to Plaintiff's claims for Breach of Fiduciary Duty, Aiding and Abetting a Breach of Fiduciary Duty, Fraud, and Negligent Misrepresentation.

IT IS HEREBY FURTHER ORDERED that the Hale Defendants' *Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Second Amended Complaint* is GRANTED, in part, with respect to Defendants INV-MID, LLC, EREF-MID II, LLC and HCP-MID, LLC.

IT IS HEREBY FURTHER ORDERED that the Second Amended Complaint is DISMISSED with prejudice as to Defendants INV-MID, LLC, EREF-MID II, LLC and HCP-MID, LLC.

IT IS FURTHER ORDERED that Plaintiff is permitted jurisdictional discovery regarding Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Roger A. Newell, Rodney D. Knutson, Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, and Kenneth A. Brunk, which jurisdictional discovery shall be limited to these Defendants' contacts with Nevada related to the planning, preparation, and issuance of the SEC

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

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

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

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

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

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

IT IS SO ORDERED.

DATED this 6 day of June 2018.

Nancy L Allf
DISTRICT COURT JUDGE

Respectfully submitted by:

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David J. Freeman, Esq. (10045)
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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 REGARDING DEFENDANTS' MOTIONS TO DISMISS SECOND AMENDED COMPLAINT

Electronic Filing Case

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Case Number: A-17-756971-B

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

DATED this 7th day of June, 2018.

By */s/ David Freeman*

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CERTIFICATE OF SERVICE

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

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

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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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/s/ Yalonda Dekle
An Employee of Holland & Hart LLP

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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 REGARDING DEFENDANTS' MOTIONS TO DISMISS SECOND AMENDED COMPLAINT** Electronic Filing Case

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

Case Number: A-17-756971-B

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

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

Having carefully considered the D&O Defendants' Motion, Hale Joinder, Brunk Joinder, Plaintiff's *Consolidated Memorandum of Points and Authorities in Opposition to Motions to Dismiss*, the Defendants' respective reply briefs 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 decides the submitted issues as follows:

FACTUAL ALLEGATIONS

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

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

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

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

5. 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.* ¶ 27.

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

7. 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 ¶ 30), including the Pan Mine (*see id.* ¶ 32).

8. 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.* ¶ 35.

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

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

11. Plaintiff alleges that, by either mid or late 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 2011 Pan Mine Study, but the Defendants did not inform investors of the material impact on cash flows as a result of those differences. *Id.* ¶ 65.

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

13. 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). *Id.* ¶ 69.

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

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

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

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

CONCLUSIONS OF LAW

17. 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).

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

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

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

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

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

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

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

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

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

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

27. The Court may exercise general personal jurisdiction over a defendant when the defendant's contacts with the State of Nevada are so "substantial" or "continuous and systematic"

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

28. Alternatively, the Court may exercise specific personal jurisdiction over a defendant where: (1) purposefully availed itself of the privilege of acting within the state or of causing important consequences in the state; (2) the cause of action arises from defendant's purposeful contacts with the forum state; and (3) those contacts with the forum state were substantial enough 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).

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

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

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

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

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

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

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35. The Court concludes that the parties may conduct jurisdictional discovery related to Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Roger A. Newell, Rodney D. Knutson, Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, and Kenneth A. Brunk. Jurisdictional discovery is limited to each of these Defendants' contacts with Nevada related to the planning, preparation, and issuance of the SEC filings and Press Releases that predicate the Breach of Fiduciary Duty, Aiding and Abetting a Breach of Fiduciary Duty, Fraud, and Negligent Misrepresentation causes of action.

ORDER

Based on the foregoing, and good cause appearing,

IT IS HEREBY ORDERED that Defendants' Motion is GRANTED as to Plaintiff's Claim for Violation of California Securities Act, which is hereby DISMISSED with prejudice as to all Defendants.

IT IS FURTHER ORDERED that Defendants' Motion is DENIED as to Plaintiff's claims for Breach of Fiduciary Duty, Aiding and Abetting a Breach of Fiduciary Duty, Fraud, and Negligent Misrepresentation.

IT IS HEREBY FURTHER ORDERED that the Hale Defendants' *Motion to Dismiss and Joinder to D&O Defendants' Motion to Dismiss Second Amended Complaint* is GRANTED, in part, with respect to Defendants INV-MID, LLC, EREF-MID II, LLC and HCP-MID, LLC.

IT IS HEREBY FURTHER ORDERED that the Second Amended Complaint is DISMISSED with prejudice as to Defendants INV-MID, LLC, EREF-MID II, LLC and HCP-MID, LLC.

IT IS FURTHER ORDERED that Plaintiff is permitted jurisdictional discovery regarding Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Roger A. Newell, Rodney D. Knutson, Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, and Kenneth A. Brunk, which jurisdictional discovery shall be limited to these Defendants' contacts with Nevada related to the planning, preparation, and issuance of the SEC

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

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

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

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

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

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

IT IS SO ORDERED.

DATED this 6 day of June 2018.

Nancy L Allf
DISTRICT COURT JUDGE

Respectfully submitted by:

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

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

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

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DISTRICT COURT
CLARK COUNTY, NEVADA

Securities (NRS 90) **COURT MINUTES** **September 26, 2017**

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

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

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

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

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

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

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

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Securities (NRS 90)	**COURT MINUTES**	**October 24, 2017**

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

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

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

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

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

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

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

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Securities (NRS 90)	**COURT MINUTES**	**November 01, 2017**

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

November 01, 2017 10:30 AM All Pending Motions

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

COURT CLERK: Nicole McDevitt

RECORDER: Brynn White

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

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

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

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Securities (NRS 90)	**COURT MINUTES**	**November 21, 2017**

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

November 21, 2017 3:00 AM Decision

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

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

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

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

CONTINUED TO: 12/5/2017 (CHAMBERS)

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Securities (NRS 90)	**COURT MINUTES**	**November 28, 2017**

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

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

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

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

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

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

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

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Securities (NRS 90)	**COURT MINUTES**	**November 29, 2017**

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

November 29, 2017 3:00 AM Decision

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

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

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

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

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

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

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

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

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Securities (NRS 90)	**COURT MINUTES**	**May 09, 2018**

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

May 09, 2018 **10:30 AM** **All Pending Motions**

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

COURT CLERK: Nicole McDevitt

RECORDER: Brynn White

REPORTER:

PARTIES PRESENT:

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

JOURNAL ENTRIES

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

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

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Securities (NRS 90)	**COURT MINUTES**	**May 18, 2018**

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

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

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

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- COURT FINDS after review on March 16, 2018, Defendants Richard D. Moritz, Bradley J. Blacketor, Timothy Haddon, Richard Sawchak, John W. Sheridan, Frank Yu, Roger A. Newell, and Rodney D. Knutson filed D&O Defendants Motion to Dismiss Second Amended Complaint. Defendants Martin M. Hale, Jr., Trey Anderson, Nathaniel Klein, INV-MID, LLC, EREF-MID II, LLC, and HCP-MID, LLC filed a Motion to Dismiss and Joinder to D&O Defendants Motion to Dismiss Second Amended Complaint. Defendant Kenneth A. Brunk filed Kenneth A. Brunk s Motion to Dismiss Second Amended Complaint and Joinder in D&O Defendants Motion to Dismiss Second Amended Complaint.

COURT FURTHER FINDS after review these matters came on for hearing on May 9, 2018, at which counsel presented argument. The Court being apprised of the matters and having considered the arguments of counsel, as well as the pleadings and papers on file, the matter is deemed submitted.

COURT FURTHER FINDS after review the parties do not dispute that the Court has general jurisdiction over Defendant Frank Yu.

COURT FURTHER FINDS after review the first cause of action is for Securities Fraud. Cal. Corp. Code 25401 provides: It is unlawful for any person to offer or sell a security in this state, or to buy

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

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

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

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

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

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

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

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

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

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

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

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Securities (NRS 90)	**COURT MINUTES**	**June 04, 2018**

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

June 04, 2018	**3:00 AM**	**Minute Order**	**Minute Order: Disclosure *ENTERED IN ERROR***

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

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Securities (NRS 90)	**COURT MINUTES**	**June 21, 2018**

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

June 21, 2018 **10:00 AM** **All Pending Motions**

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

COURT CLERK: Nicole McDevitt

RECORDER: Brynn White

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

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

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

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Securities (NRS 90)	**COURT MINUTES**	**September 25, 2018**

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

September 25, 2018 3:00 AM Status Check

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

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

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

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

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

CONTINUED TO 12/4/2018 (CHAMBERS)

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Securities (NRS 90)	**COURT MINUTES**	**December 04, 2018**

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

December 04, 2018 3:00 AM Status Check

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

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

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

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

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

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

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

CONTINUED TO: 1/22/2019 (CHAMBERS)

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Securities (NRS 90)	**COURT MINUTES**	**January 22, 2019**

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

January 22, 2019 **3:00 AM** **Status Check**

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

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

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

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

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

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

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

CONTINUED TO: 3/26/2019 (CHAMBERS)

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

March 26, 2019 **3:00 AM** **Status Check**

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

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

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

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

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

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

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

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

CONTINUED TO: 6/4/2019 (CHAMBERS)

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Securities (NRS 90)	**COURT MINUTES**	**June 04, 2019**

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

June 04, 2019 **3:00 AM** **Status Check**

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

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

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

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

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

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

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

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

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

CONTINUED TO: 10/15/2019 (CHAMBERS)

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

DISTRICT COURT
CLARK COUNTY, NEVADA

Securities (NRS 90)	**COURT MINUTES**	**October 15, 2019**

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

October 15, 2019 **3:00 AM** **Status Check**

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

COURT CLERK: Nicole McDevitt

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

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

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

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

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

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

COURT FURTHER FINDS after review that the Defendant s Status Report was filed on May 30, 2019 and the Plaintiff s Status Report was filed on May 31, 2019. The status reports indicate that the Writ Petition remains pending before the Nevada Supreme Court and that the stay in this case is still warranted. The Status Check was continued to October 15, 2019 for the parties to file a Status Report.

COURT FURTHER FINDS after review that Plaintiff s Status Report was filed with the Court on October 10, 2019 and Defendant s Status Report was filed with the Court on October 11, 2019. The Defendant s Status Report indicates that the Nevada Supreme Court entered an Order on October 11, 2019 granting Defendants Petition for Writ of Prohibition. The Supreme Court s Order directed the Clerk of the Supreme Court to issue a Writ of Prohibition for this Court to enter an order granting Defendants Motion to Dismiss.

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

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

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

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

DATE: April 2, 2020
CASE: A-17-756971-B

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

NOTICE OF APPEAL FILED: March 30, 2020 (1:11 pm)

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

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

☒ $250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
- If the $250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.

☐ $24 – District Court Filing Fee (Make Check Payable to the District Court)**

☒ $500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
- NRAP 7: Bond For Costs On Appeal in Civil Cases

☐ Case Appeal Statement
- NRAP 3 (a)(1), Form 2

☐ Order

☐ Notice of Entry of Order

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

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

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

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

Certification of Copy

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

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

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

DANIEL E. WOLFUS,

Plaintiff(s),

vs.

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

Defendant(s),

Case No: A-17-756971-B

Dept No: XXVII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 2 day of April 2020.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk