

1 **Lewis Roca Rothgerber Christie LLP**

2 One South Church Avenue, Suite 2000
Tucson, AZ 85701-1611

3 **Robert M. Charles, Jr.** (State Bar No. 07359)
Direct Dial: 520.629.4427
Direct Fax: 520.622.3088
Email: RCharles@lewisroca.com

4 **Ken Coleman** (*pro hac vice*)
2628 Broadway
New York, NY 10025
Tel. (646) 662-0138
Email: ken@kencoleman.us

6 *Attorneys for KSV Restructuring Inc., as Monitor and Foreign Representative*

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF ARIZONA**

9 In re:

10 Elevation Gold Mining Corporation, *et al.*,

11 Debtor in a Foreign Proceeding.

Chapter 15

Case No. 2:24-bk-06359-EPB

(Jointly Administered)

Monitor's Motion To File Under Seal

Date: November 5, 2024

Time: 10:30 a.m.

Location: Telephonic

12
13
14
15
16 KSV Restructuring Inc. as Monitor and Foreign Representative (the "**Monitor**") moves
17 this Court for an ex parte order pursuant to Local Rule 5005-6 11 U.S.C. § 107(b) and 107(c)
18 and Bankr. R. 9018 and 9037 authorizing the Monitor to file the Confidential 4th Affidavit of
19 Tim Swendseid sworn on September 19, 2024 (the "**Confidential Swendseid Affidavit**")
20 under seal and to provide a copy of the same to counsel for Patriot Gold Corporation
21 ("**Patriot**") and Nomad Royalty Company Ltd. ("**Nomad**") upon request and execution of an
22 appropriate confidentiality stipulation.

23 By order of the Supreme Court of British Columbia (the "**Canadian Court**"), the
24 Confidential Swendseid Affidavit was filed under seal in Supreme Court of British Columbia
25 Action No. S-245121, Vancouver Registry (the "**Canadian Proceeding**") as is the normal
26 practice in Canadian insolvency proceedings when dealing with personal information under
27 Canada's Personal Information Protection and Electronic Documents Act (further explained
28 below). The Monitor filed the Motion For Recognition And Enforcement Of Canadian

1 Financing and KERP Order at Dkt. #50. In opposition, counsel for Patriot and Nomad contend
2 that the identities and personal financial information of the employees believed to be key by
3 Elevation Gold Mining Corporation and Golden Vertex Corp. (“Golden Vertex”) should be
4 made publicly available in this proceeding. The Monitor respectfully submits that this
5 personal information should be maintained as confidential for the protection of the privacy
6 interests of the employees and to protect Golden Vertex from unfair competition by
7 competitors who would know the terms of employment of the key employees.

8 **Discussion**

9 Section 107(b) of the Bankruptcy Code provides, in relevant part that “[o]n request of a
10 party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the
11 bankruptcy court may – (1) protect an entity with respect to a trade secret or confidential research,
12 development, or commercial information”

13 Fed. R. Bankr. P. 9018 similarly provides that “[o]n motion or on its own initiative, with
14 or without notice, the court may make any order which just requires (1) to protect the estate or
15 any entity in respect of a trade secret or other confidential research, development, or commercial
16 information If an order is entered under this rule without notice, any entity affected thereby
17 may move to vacate or modify the order, and after a hearing on notice the court shall determine
18 the motion.”

19 Here, the key employees have a privacy interest in having their names and terms of
20 employment kept confidential. Golden Vertex has a business interest in preventing its competitors
21 from knowing the terms of employment of its key employees.

22 Further, sealing the affidavit is consistent with Canadian law and practice. In Canada,
23 employers are required to keep their employees’ personal and salary information confidential
24 pursuant to applicable privacy legislation (in this case, the federal Personal Information
25 Protection and Electronic Documents Act, SC 2000, c 5 and the British Columbia Personal
26 Information Protection Act, R.S.B.C. 2003, c. 63); such information would not find its way into
27 the public domain. Thus, Canadian insolvency courts have held that participants in key employee
28 retention plans have a reasonable expectation that their names and their salary information will be

1 kept confidential, and that protecting sensitive personal and compensation information is an
2 important commercial interest that should be guarded, as disclosure would cause harm to both the
3 participants and the debtors and create an obvious strategic advantage to competitors. [Canwest
4 Publishing Inc. / Publications Canwest Inc., Re, 2010 CarswellOnt 212, 2022 ONSC 222, at para
5 65; Canwest Global Communications Corp., Re, 2009 CarswellOnt 6184, [2009] O.J. No. 4286,
6 at para 53].

7 For at least these reasons, under the circumstances, a sealing order is appropriate.

8 If Patriot and Nomad insist receiving this information, the Monitor would consent to
9 counsel being provided the information under an appropriate confidentiality stipulation.

10 **Request for Relief**

11 The Monitor requests that this Court authorize the Monitor to file the Confidential
12 Swendseid Affidavit under seal and to provide a copy to counsel for Patriot and Nomad upon
13 execution of an appropriate confidentiality stipulation. Pursuant to Local Rule 5005-6, a copy of
14 the Confidential Swendseid Affidavit has been filed electronically under seal.

15 A proposed form of order is submitted for the Court's convenience.

16 DATED October 31, 2024.

17 LEWIS ROCA ROTHGERBER CHRISTIE LLP

18
19 By: /s/ Robert M. Charles, Jr.
Robert M. Charles, Jr.

20
21 and

22 By: /s/ Ken Coleman
Ken Coleman (admitted *pro hac vice*)

23
24 Attorneys for KSV Restructuring Inc. as Monitor and
25 Foreign Representative of Elevation Gold Mining
26 Corporation, Eclipse Gold Mining Corporation,
27 Alcmene Mining Inc., Golden Vertex Corp. Golden
28 Vertex (Idaho) Corp. and Hercules Gold USA LLC

CERTIFICATE OF SERVICE

I certify that on this 31st day of October, 2024, I electronically transmitted the attached document to the Clerk’s office using the CM/ECF System for filing and served through the Notice of Electronic Filing automatically generated by the Court’s facilities.

ANTHONY W. AUSTIN on behalf of Debtor Elevation Gold Mining Corporation
aaustin@fennemorelaw.com, gkbacon@fclaw.com

ANTHONY W. AUSTIN on behalf of Debtor GOLDEN VERTEX CORP.
aaustin@fennemorelaw.com, gkbacon@fclaw.com

ROBERT J. BERENS on behalf of Creditor Trisura Insurance Company
rberens@smtdlaw.com, adelgado@smtdlaw.com

BRADLEY A COSMAN on behalf of Creditor Maverix Metals Inc.
BCosman@perkinscoie.com,
kmclure@perkinscoie.com,DocketPHX@perkinscoie.com,scarnall@perkinscoie.com

JAMES GEORGE FLORENTINE on behalf of Creditor Nomad Royalty Company
Limited
jflorentine@swlaw.com, jthomes@swlaw.com,docket@swlaw.com

JAMES GEORGE FLORENTINE on behalf of Creditor Nomad Royalty Company Ltd.
jflorentine@swlaw.com, jthomes@swlaw.com,docket@swlaw.com

Amir Gamliel on behalf of Creditor Maverix Metals Inc.
agamliel@perkinscoie.com

JOHN A. HARRIS on behalf of Creditor PATRIOT GOLD CORP.
john.harris@quarles.com, sybil.aytch@quarles.com

PAUL A LOUCKS on behalf of Creditor PATRIOT GOLD CORP.
ploucks@dmyl.com

ANTHONY F. PUSATERI on behalf of Creditor PATRIOT GOLD CORP.
Anthony.Pusateri@quarles.com, sybil.aytch@quarles.com,dawn.mccombs@quarles.com

Stacy Porche on behalf of Debtor GOLDEN VERTEX CORP.
sporche@fennemorelaw.com, lmarble@fennemorelaw.com

MICHAEL P. ROLLAND on behalf of Creditor Mohave Electric Cooperative,
Incorporated
mpr@eblawyers.com, jlc@eblawyers.com,acm@eblawyers.com

1 BRYCE A. SUZUKI on behalf of Creditor Nomad Royalty Company Limited
2 bsuzuki@swlaw.com, docket@swlaw.com,pshanahan@swlaw.com

3 BRYCE A. SUZUKI on behalf of Creditor Nomad Royalty Company Ltd.
4 bsuzuki@swlaw.com, docket@swlaw.com,pshanahan@swlaw.com

5 LARRY L. WATSON on behalf of U.S. Trustee U.S. TRUSTEE
6 larry.watson@usdoj.gov, Christopher.stewart2@usdoj.gov,coleen.craig@usdoj.gov

7 JEFFREY CHARLES WHITLEY on behalf of Creditor Hartmut Baitis
8 jeff@whitleylegalgroup.com

9 JEFFREY CHARLES WHITLEY on behalf of Creditor Larry Lackey
10 jeff@whitleylegalgroup.com

11 JEFFREY CHARLES WHITLEY on behalf of Creditor Robert B. Hawkins
12 jeff@whitleylegalgroup.com

13 /s/ Renee L. Creswell

14 Lewis Roca Rothgerber Christie LLP