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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:
Elevation Gold Mining Corporation, *et al.*
Debtor in a Foreign Proceeding.

Chapter 15
Case No. 2:24-bk-06359-EPB
**Objection To PN Form Of Canadian
Sale And Distribution Orders**

KSV Restructuring Inc. is the court-appointed monitor (the “Monitor”) of Elevation Gold Mining Corporation (“Elevation Gold”) and its affiliates (collectively, “Group”) in proceedings before the Supreme Court of British Columbia, Vancouver Registry (the “Canadian Court”), under Canada’s Companies’ Creditors Arrangement Act (the “Canadian Proceeding”). The Monitor, as the authorized foreign representative of the Canadian Proceeding, commenced these Chapter 15 cases on August 2, 2024, by filing official form petitions and Verified Petition for Recognition of Foreign Proceeding and Related Relief (collectively, the “Chapter 15 Petition”), with accompanying documentation, pursuant to §§ 1504 and 1515 of title 11 of the United States Code (the “Bankruptcy Code”). Following a hearing before this Court on August 27, 2024, an order was entered on September 16, 2024 [DE 49] (the “Recognition Order”), granting the Chapter 15 Petition, recognizing the Canadian Proceeding as a foreign main proceeding and giving full force and effect in the United States to the Canadian Court’s Initial Order dated August 1, 2024 and the Amended and Restated Initial Order dated August 12, 2024 (the “ARIO”). Neither the ARIO nor the Recognition Order have been appealed, amended or varied since being issued.

127072685.1

1 As set forth herein, the proposed form of order submitted by Patriot Gold and
2 Nomad is problematic for three reasons: (i) it improperly sequesters the entirety of the
3 “GVC Residual Assets” such that it precludes payment by the Group of normal post-filing
4 expenses; (ii) it prevents compliance with the ARIO, including the court-ordered charges
5 thereunder, as recognized and enforced by this Court’s Recognition Order, and in so doing
6 is a collateral attack on both Orders; and (iii) it denies the Group’s access to the funding
7 necessary to continue the Canadian and U.S. proceedings, including to participate in the
8 pending litigation as scheduled by this Court to resolve the interests of Patriot and Nomad.

9 **A. Proposed freeze of all Residual Assets prevents an effective transition and**
10 **prohibits GVC and Elevation Gold from participating in the Adversary**
11 **Proceedings**

12 As discussed by the parties, certain expenses have been incurred in the ordinary
13 course of operations that will not be payable until after the closing of the Sale, some of
14 which have not yet been invoiced. The language of the proposed order would effectively
15 eliminate any ability to pay those expenses and could impair a timely closing of the
16 transaction for GVC. These expenses include but are not limited to payroll, insurance,
17 utilities and operating expenses for the post-filing period prior to closing. These types of
18 expenses are set forth in the cash flows appended to the Monitor’s reports (see the
19 Monitor’s Pre-Filing Report and Third Report) which were filed in this case and served on
20 Patriot and Nomad.

21 Precluding payment of these expenses leaves GVC in an untenable position of not
22 satisfying its normal post-filing expenditures, which creates a conflict with the orders
23 issued by the Canadian Court and recognized and enforced by this Court, including the
24 ARIO. Either scenario leads to substantial harm to the estates of the Debtors, and thus,
25 their creditors, including employees. Accordingly, any order entered recognizing and
26 approving the Sale Order should not interfere with the ARIO or the Recognition Order
27 and should allow for the payment of expenses of the Debtors that accrued pre-closing but
28 are payable and due post-closing. The proposed attached edits to the form of order
submitted by Patriot and Nomad would resolve this.

1 Preventing Elevation Gold from using the Residual Assets will also prohibit it from
2 funding the ongoing litigation of the Adversary Claims, which results in direct harm to the
3 interests of the Debtors' creditors.

4 **B. Proposed freeze of Residual Assets contradicts the ARIO, as recognized and**
5 **enforced by this Court's Recognition Order**

6 The Canadian Court's Initial Order and ARIO were expressly recognized and made
7 enforceable in the United States by this Court's Recognition Order of September 16, 2024
8 [Dkt. 49]. These Orders, set forth and expressly allow the Monitor and Debtors to pay
9 certain types of expenses, including those outlined in paragraphs 7 and 8 of the ARIO:

10 7. Except as otherwise provided herein, the [Debtors] shall be entitled to
11 pay all expenses reasonably incurred by the [Debtors] in carrying on the Business
12 in the ordinary course following the Order Date, and in carrying out the provisions
13 of this Order, which expenses shall include, without limitation:

14 (a) all expenses and capital expenditures reasonably incurred and
15 which are necessary for the preservation of the Property or the Business
16 including, without limitation, payments on account of insurance (including
17 directors' and officers' insurance), maintenance and security services;

18 (b) all obligations incurred by the [Debtors] after the Order Date,
19 including without limitation, with respect to goods and services actually
20 supplied to the Petitioners following the Order Date (including those under
21 purchase orders outstanding at the Order Date but excluding any interest on
22 the Petitioners' obligations incurred prior to the Order Date); and

23 (c) fees and disbursements of the kind referred to in paragraph
24 6(b)– Assistants' fees,¹ which may be incurred after the Order Date.

25 8. The [Debtors] are authorized to remit, in accordance with legal
26 requirements, or pay:

27 ¹ Paragraph 6(b) of the ARIO provides for the fees and disbursements of any Assistants [defined
28 as employees, consultants, agents, experts, accountants, counsel and such other persons] retained
or employed by the Debtors which are related to the Debtors' restructuring, at their standard rates
and charges, including payment of the fees and disbursements of legal counsel retained by the
Petitioners, whenever and wherever incurred, in respect of: (i) these proceedings or any similar
proceedings in other jurisdictions in which the Debtors or any subsidiaries or affiliated companies
of the Debtors are domiciled; (ii) any litigation in which the Debtors are named as party or [are]
otherwise involved, whether commenced before or after the Order Date; and (iii) any related
corporate matters.

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(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;

(b) all goods and services or other applicable sales taxes (collectively, “Sales Taxes”) required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

These types of expenses relate to the operations and running of the business of Debtors during these and the Canadian proceedings and the administrative expenses of both proceedings. Under the ARIO and the Recognition Order, which remain in full force and effect in both Canada and the United States, the Monitor is entitled to pay post-closing from the GVC Residual Assets those ordinary expenses set forth in the ARIO. The form of order proposed by the Monitor and the Debtors accords with the ARIO and the Recognition Order.

C. Proposed definition of Residual Assets is not consistent with the term as defined in the Sale Agreement and incorporated in the Canadian Sale Order

The definition of the GVC Residual Assets is set forth in the Sale Agreement and incorporated in the Canadian Sale Order. The proposed form of order submitted by Patriot and Nomad includes additional categories of assets to that definition, thereby expanding the scope of what Nomad and Patriot Gold seek to have this Court order sequester. Any such expansion is a step too far and an overreach by creditors who have yet to prove any entitlement to the GVC Residual Assets, let alone an entitlement to the

1 entirety of the proceeds.

2 **D. Patriot and Nomad's claim**

3 It should be noted, that Nomad and Patriot Gold have yet to assert a claim beyond
4 the unpaid amounts set forth on the Debtors' books and records which totals
5 approximately \$2,000,000 for both parties. However, Nomad and Patriot Gold seek to
6 freeze the entirety of the GVC Residual Assets, which significantly exceeds this amount.

7 Any provisional relief granted to them should be limited to that which will limit the
8 asserted harm and protect their interests. Freezing the entirety of the GVC Residual
9 Assets goes beyond what is necessary to protect Patriot's and Nomad's asserted interests
10 and only serves to hamper the Monitor's administration of the estate post-closing.

11 Accordingly, the Monitor requests that this Court reject the proposed order
12 submitted by Nomad and Patriot Gold and adopt the order submitted herewith.

13 DATED this 28th day of December, 2024.

14 LEWIS ROCA ROTHGERBER CHRISTIE LLP

15 By: /s/ Robert M. Charles, Jr.
16 Robert M. Charles, Jr.

17 AND

18 By: /s/ Ken Coleman
19 Ken Coleman (*pro hac vice pending*)

20 Attorneys for KSV Restructuring Inc. as Monitor

CERTIFICATE OF SERVICE

I certify that on this 28th day of December, 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.

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

In re:
Elevation Gold Mining Corporation, *et al.*,
Debtor in a Foreign Proceeding.

Chapter 15
Case No. 2:24-bk-06359-EPB
(Jointly Administered)

**ORDER RECOGNIZING AND
ENFORCING CANADIAN SALE
ORDER AND DISTRIBUTION ORDER**

This matter came before the Court pursuant to the *Motion For Recognition And Enforcement Of Canadian Sale And Distribution Order* [Dkt. 110] (the “**Recognition Motion**”) filed in the above-captioned Chapter 15 cases (collectively, the “**Chapter 15 Case**”) by KSV Restructuring Inc. in its capacity as the Monitor (the “**Monitor**”) for the Chapter 15 Debtors in the Chapter 15 Case (collectively, the “**Debtors**”). In the Recognition Motion, the Monitor requests that this Court recognize, give full force and effect to, and make binding on all United States assets and United States creditors of the Debtors: (a) a sale and reverse vesting order (the “**Canadian Sale Order**”) entered by the Canadian Insolvency Court (the “**Canadian Court**”) in the pending Canadian insolvency proceeding involving the Debtors (the “**Canadian Proceeding**”); and (b) a distribution order entered by the Canadian Court in the Canadian Proceeding (the “**Canadian Distribution Order**” and, collectively with the Canadian Sale Order, the “**Canadian Orders**”). A copy of the Canadian Sale Order is attached to this Order as **Exhibit 1** and a copy of the Canadian Distribution Order is attached hereto as **Exhibit 2**.

1 Objections (collectively, the “**Objections**”) to the Recognition Motion were
2 filed by Patriot Gold Corporation (“**Patriot**”) [Dkt. #139] and Nomad Royalty
3 Company Limited (“**Nomad**”) [Dkt. #138]. (Patriot and Nomad are referred to
4 herein collectively as the “**Royalty Holders**”.) The Court held a hearing on the
5 Recognition Motion on December 23, 2024 (the “**Hearing**”).

6 After consideration of the Motion, the documents submitted by the Monitor in
7 support thereof, the Objections, the other pleadings and documents submitted to the Court
8 in regard to the Motion, the arguments of counsel presented at the Hearing, and the entire
9 record before the Court regarding this matter, the Court finds and concludes as follows:

10 (A) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
11 1334 and 11 U.S.C. § 1501;

12 (B) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P);

13 (C) venue is proper in this District pursuant to 28 U.S.C. § 1410;

14 (D) the Monitor has given appropriate, sufficient and timely notice of the
15 Motion;

16 (E) the Court has the authority to grant the requested relief under 11 U.S.C. §§
17 1507 and 1521; and

18 (F) there is good cause for the entry of this Order for the reasons stated by the
19 Court on the record at the Hearing.

20 **NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

21 1. The Motion is hereby **GRANTED** as and to the extent provided in this
22 Order.

23 2. Except as provided in this Order, the Objections filed by Patriot and Nomad
24 are otherwise overruled.

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27 _____
28 the same meanings as defined in the Canadian Sale Order and/or the Distribution Order, as
 applicable.

1 3. The Canadian Orders are approved, recognized, and given full force and
2 effect in the United States by this Court, but only under the terms and conditions stated
3 in this Order.

4 4. Notwithstanding any contrary provision of either the Canadian Sale Order
5 or the Canadian Distribution Order, none of the rights, claims, or interests of the
6 Royalty Holders under their respective royalty deeds or agreements, including their
7 respective rights in the minerals at the Moss Mine in Arizona owned ~~by~~by GVC and
8 their proceeds, and further including all claims asserted or that may be asserted by the
9 Royalty Holders in the Adversary Proceeding filed by Patriot [Adv. No.
10 2:24-ap-00253-EPB] and the Adversary Proceeding filed by Nomad [Adv. No.
11 2:24-ap-00252-EPB] (collectively, the “**Adversary Proceedings**”), are altered or
12 affected in any way by this Order or the Canadian Orders, and all such rights, claims
13 and interests held by the Royalty Holders are fully preserved as rights, claims, and/or
14 interests enforceable against GVC (including after closing of the sale transaction which
15 is the subject of the Canadian Sale Order), the Debtors, and all other parties.

16 5. Without limiting the foregoing:

17 a. Paragraph 11 of the Canadian Sale Order, the text of which is
18 copied below, is expressly approved and adopted by this Court as an operative part of
19 this Order recognizing the Canadian Sale Order:

20 **Paragraph 11 of Canadian Sale Order**

21 Notwithstanding anything to the contrary in this Order, this Court
22 specifically makes no finding as to whether the interests of Patriot
23 or Nomad are interests in real property or in relation to the
24 Adversary Claims, and any interests, rights, or related claims
25 asserted by Patriot or Nomad against the Petitioners in the
26 Adversary Claims shall not be affected by this Court’s approval of
27 the Sale Agreement or the Transaction, and shall be adjudicated in
28 the Chapter 15 Court and, where appropriate, any other federal or
state U.S. courts. This Order is without prejudice to the
determination by the United State Bankruptcy Court for the District
of Arizona of (i) whether the interest of Patriot or Nomad are
interests in real property or (ii) the Adversary Claims, including
with respect to the positions of all parties.

1 [As defined in the Canadian Sale Order, “Adversary Claims’ means
2 the claims set out in the adversary complaints filed in the Chapter 15
3 Proceedings by Nomad and Patriot on November 18, 2024 and
4 November 19, 2024, respectively, as may be amended or adjudicated
5 in accordance with the Chapter 15 Proceedings;” Canadian Sale
6 Order, ¶ 2(a).]

b. All “GVC Residual Assets” ~~(as, defined in the Canadian Sale Order)~~

by reference to the Sale Agreement as:

all of GVC’s cash and cash equivalents, bank deposits, bank
balances, and moneys in possession of banks, the Monitor
and other depositories, any Accounts Receivable from
Refinery, and any deposits of GVC held in trust accounts to
secure payment of the reasonable fees and disbursements of
the Monitor, the Sales Agent and any professional advisors
of GVC, Elevation Gold, or the Monitor,

transferred from GVC to Elevation Gold under the Canadian Sale Order, ~~including all
pre-sale closing cash, accounts receivable, and rights to proceeds from minerals
extraction~~ (i) shall remain subject to all of the respective asserted or potential claims
and/or interests of the Royalty Holders, (ii) shall be segregated, preserved, and
accounted for by the Monitor and the Debtors, and (iii) shall not be consumed, used, or
disbursed in any way by the Monitor or the Debtors pending further order of this Court
~~after a determination of the respective claims, rights, and interests asserted by the
Royalty Holders in such property has been made.~~ Notwithstanding the foregoing, the
Monitor and/or the Debtors shall be entitled to utilize GVC Residual Assets to pay: (x)
expenses incurred prior to closing but due and payable post-closing; and (y) all amounts
authorized and directed to be paid pursuant to the Amended and Restated Initial Order
of the Canadian Court dated August 12, 2024 (the “ARIO”) (Dkt. 34-1), which was
recognized and made enforceable in the United States by this Court,—’s recognition
order dated September 16, 2024 (the “Recognition Order”) (Dkt. 41). Nothing herein
shall affect or alter any charges granted by the ARIO as made enforceable by the
Recognition Order.

1 c. The proceeds of the Purchased Assets, as defined in the Canadian
2 Sale Order, shall be held in accordance with the terms of the Canadian Distribution
3 Order.

4 d. The third party releases granted in the Canadian Orders shall not be
5 recognized or effective in the United States with regard to: (i) the respective claims and
6 interests of the Royalty Holders against GVC and/or the other Debtors with respect to
7 United States property, including, without limitation, all claims and interests pursuant to
8 their respective royalty agreements or as stated in the Adversary Proceedings; and (ii)
9 any claims that the Royalty Holders may hold or assert in the United States in respect of
10 United States property against any third parties, including, without limitation, the
11 Debtors' directors, officers, employees, or any third party recipients of funds in which
12 the Royalty Holders assert(ed) an interest.

13 6. All parties' rights regarding the Adversary Proceedings, ~~including any~~
14 ~~jurisdictional or other arguments or claims that may be asserted as a result of the~~
15 ~~transactions which are the subject of the Canadian Orders~~, shall remain unaffected and
16 are hereby fully reserved.

17 7. Within two business days of the entry of this Order, the Monitor shall serve
18 a true and correct copy of this Order by the Court's electronic service, and if that is not
19 available, by e-mail, where practicable, and where e-mail service is impracticable, by
20 United States mail, first-class postage prepaid or by overnight courier, to: (a) the Office of
21 the United States Trustee for the District of Arizona; (b) all parties to litigation currently
22 pending in the United States in which any of the Debtors is a party; (c) all known material
23 U.S. creditors and contract counterparties of the Debtors; and (d) all parties who have
24 entered an appearance in the Chapter 15 Case. Such service shall constitute due, adequate
25 and sufficient service and notice of this Order, and no other or further service or notice
26 shall be required.

27 8. Notwithstanding any applicable Bankruptcy Rule, the terms and condition
28 of this Order shall be immediately effective and enforceable upon its entry.

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9. The Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

DATED AND SIGNED ABOVE

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Document 1 ID	file:///lawsonlundell.net/dfs/User.Redirect/aet/Documents/Elevation Gold -- proposed order enforcing Canadian Sale Order-93895025-v4 (002).docx
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Document 2 ID	iManage://dms/Lawson/26757666/1
Description	#26757666v1<Lawson> - Proposed Sale Order - Post Hearing (Dec 28 Draft)
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