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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:

ELEVATION GOLD MINING
CORPORATION, et al.,

Debtor in a Foreign Proceeding.

In Proceedings Under Chapter 15

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

Jointly Administered with:

Case No. 2:24-bk-06364-DPC
Case No. 2:24-bk-06367-BKM
Case No. 2:24-bk-06368-MCW
Case No. 2:24-bk-06370-EPB
Case No. 2:24-bk-06371-DPC

**JOINT MOTION BY ROYALTY
HOLDERS REQUESTING THE
COURT TO SET A SCHEDULING
HEARING REGARDING DEBTORS'
AVOIDANCE MOTIONS**

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This Joint Motion is filed by: (i) Patriot Gold Corporation (“**Patriot Gold**”); and (ii) Nomad Royalty Company Ltd. (“**Nomad**” and, together with Patriot Gold, the “**Royalty Holders**”).¹ The Royalty Holders file this Joint Motion in relation to the

¹ By filing this Joint Motion, the Royalty Holders do not waive, and they fully reserve, all of their respective rights, remedies, defenses, and objections that may be applicable regarding the Chapter 15 Case, including, but not limited to, objections or defenses they may have to the jurisdiction of this Bankruptcy Court.

1 following pleadings filed by the Debtors (the “**Chapter 15 Debtors**”) in the above-
2 captioned Chapter 15 cases (collectively, the “**Chapter 15 Case**”):

3 (a) the Debtors’ *Motion To Determine The Nature Of Patriot Gold Corp’s*
4 *Royalty Interest* [Docket No. 52] (the “**Patriot Gold Avoidance Motion**”);

5 (b) the Debtors’ *Motion To Determine The Nature Of Nomad Royalty Company*
6 *Limited’s Interest* [Docket No. 53] (the “**Nomad Avoidance Motion**” and, together with
7 the Patriot Gold Avoidance Motion, the “**Avoidance Motions**”); and

8 (c) the *Motion To Expedite Royalty Determination Motions* [Docket No. 55]
9 (the “**Motion to Expedite**”) in which the Chapter 15 Debtors ask for expedited
10 consideration of the Avoidance Motions.

11 Both Patriot Gold and Nomad have filed objections to the Debtors’ Motion to
12 Expedite. *See* Patriot Gold Objection at Docket No. 57 and Nomad Objection and Joinder
13 at Docket No. 60. As of the filing of this Joint Motion, the Court has not yet entered a
14 ruling or scheduled a hearing on the Motion to Expedite. The Court also has not yet
15 scheduled any proceedings with respect to the Avoidance Motions.²

16 Pursuant to this Joint Motion, and for the reasons discussed below, the Royalty
17 Holders request that the Court set a Scheduling Hearing to address the following matters:

18 (a) Consideration of the Motion to Expedite and the Royalty Holders’
19 objections thereto; and

20 (b) Setting a briefing and hearing schedule for determination of threshold
21 procedural issues regarding the Avoidance Motions, including, among other things,
22 whether the Avoidance Motions should properly proceed as an adversary proceeding or as
23 a contested matter.

24 In support of this Joint Motion, the Royalty Holders state as follows:
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27 ² In addition to the Avoidance Motions listed above, the Chapter 15 Debtors have also filed
28 a *Motion To Determine The Nature Of The Finder’s Fee Agreement* [Docket No. 54] and, pursuant
to Motion to Expedite, have also asked for expedited consideration of this Motion.

1 **I. BACKGROUND.**

2 1. Each of Patriot Gold and Nomad hold separate royalty interests (individually
3 a “**Royalty Interest**” and collectively the “**Royalty Interests**”) in the Moss Mine (the
4 “**Arizona Mine**”) owned by Chapter 15 Debtor Golden Vertex Corp., which is an Arizona
5 corporation (“**Golden Vertex Arizona**”).

6 2. The Royalty Holders’ respective Royalty Interests in minerals at the Arizona
7 Mine (and the proceeds of such minerals) are separate real property interests that are not
8 owned by Golden Vertex Arizona. Thus, the Royalty Holders’ royalty interests are outside
9 the scope of the Subject Chapter 15 Debtors’ estates and are not subject to avoidance or
10 alteration under United States bankruptcy law (or any other applicable state or federal law
11 in the United States).

12 3. Each of the Royalty Holders’ respective Royalty Interests are the subject of
13 separate documentation. However, each of the respective Royalty Interests were
14 documented as real property conveyances, they were recorded as real property
15 conveyances, and they create real property interests that run with the land of the Arizona
16 Mine.

17 4. Notwithstanding the foregoing, in the Avoidance Motions, the Chapter 15
18 Debtors seek a declaratory ruling by the Court that the Royalty Holders do not hold valid
19 real property interests. *See* Patriot Gold Avoidance Motion at 10; Nomad Avoidance
20 Motion at 8.

21 5. In short, in the Avoidance Motions the Chapter 15 Debtors ask the Court to
22 enter a declaratory judgment determining the validity of the real property interests asserted
23 by the respective Royalty Holders in the Arizona Mine.

24 6. The Chapter 15 Debtors filed the Avoidance Motions ostensibly in regard to
25 their efforts to sell the Arizona Mine. However, the Chapter 15 Debtors have not presented
26 any actual sale to the Court for approval, or even the contemplated terms or conditions of
27 any such possible future sale.
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1 7. In the Motion to Expedite, the Chapter 15 Debtors ask the Court to schedule
2 an expedited hearing on their Avoidance Motions on or before November 22, 2024.

3 **II. ARGUMENT.**

4 8. The Avoidance Motions present a number of threshold procedural issues
5 that should be addressed at this time. As an initial matter, the Avoidance Motions on their
6 face ask the Court to determine that the Royalty Holders do not hold valid real estate
7 interests in the Arizona Mine. This is the definition of an action that must be brought by
8 a properly filed adversary proceeding rather than by motion. *See* Bankruptcy Rule 7001(2)
9 (“a proceeding to *determine the validity, priority, or extent of a lien or other interest in*
10 *property*” must be sought through an adversary proceeding) (emphasis added); *see also In*
11 *re Loloee*, 241 B.R. 655, 660 (B.A.P. 9th Cir. 1999) (“[a] motion procedure cannot be
12 used to circumvent the requirement of an adversary proceeding.”). Even if motion practice
13 for such issues is allowed, the courts recognize uniformly that that targets of the motion
14 must be afforded the same procedural rights and protections that would exist in an
15 adversary proceeding. *See, e.g., In re Golden Plan of California, Inc.*, 829 F.2d 705, 711-
16 12 (9th Cir. 1986) (Ninth Circuit reversed district court’s order avoiding transfers when
17 the trustee failed to meet the procedural requirements of 7001 and instead acted through a
18 motion requesting special instructions from the court).

19 9. If there are further proceedings of any kind regarding the Avoidance
20 Motions, the Royalty Holders are entitled to, and they would be severely prejudiced if they
21 are denied, the procedural rights and protections that apply under the adversary proceeding
22 rules. These include, but are not limited to, the 30-day period provided in an adversary
23 proceeding to respond to the movant’s complaint or request; the right to take discovery (in
24 particular, discovery of the Chapter 15 Debtors regarding the Royalty Interests they agreed
25 to, their practices regarding royalties, and related matters); the right to develop expert
26 testimony (including expert testimony regarding industry practices and expectations
27 regarding royalty interests and related matters); the rights afforded under the summary
28

1 judgment rules if any party seeks a ruling or determination as a matter of law; and related
2 matters.

3 10. In addition to the fact that the relief requested in the Avoidance Motions
4 must be brought by adversary proceeding, the motions are inherently premature. The
5 Avoidance Motions were filed in regard to a possible future sale of the Arizona Mine that
6 the Chapter 15 Debtors say they may present for approval at some point. Accordingly,
7 further proceedings (if any) in regard to the Avoidance Motions and the relief requested
8 by the Chapter 15 Debtors should be deferred until such time as an actual sale proposal,
9 including all of its terms, details and provisions, is presented for approval by the Chapter
10 15 Debtors.

11 11. In addition to all of the above, there are material issues regarding whether
12 this Court or the State Courts of Arizona should properly hear the issues raised by the
13 Chapter 15 Debtors in the Avoidance Motions. The Royalty Interests held by the Royalty
14 Holders are standard real property royalty interests that are documented and contain terms
15 that are commonly used for such interests in Arizona and many other states and
16 jurisdictions. The determination of the validity of the real property interests held by the
17 Royalty Holders is a matter of non-bankruptcy state law. The validity of such interests is
18 obviously a matter of material concern to the State of Arizona, which is one of the leading
19 mineral mining states in the country. Under these circumstances, the parties should be
20 allowed to brief and present arguments regarding potential abstention under 28 U.S.C. §
21 1334(c), or to request that these important questions of state law be certified to the Arizona
22 Supreme Court. *See Thompson v. Paul*, 547 F.3d 1055, 1065 (9th Cir. 2008) (certification
23 can “in the long run save time, energy, and resources and helps build a cooperative judicial
24 federalism”); *Arizonans for official English v. Arizona*, 250 U.S. 43, 79 (1997)
25 (admonishing federal courts to certify questions to state courts when such courts “stand
26 willing to address questions of state law on certification from a federal court”).

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1 12. Under these circumstances, and before the Royalty Holders are required to
2 substantively respond to the Chapter 15 Debtors' Avoidance Motions, the Court should
3 set a Scheduling Hearing on the following matters:

4 (a) Consideration of the Motion to Expedite and the Royalty Holders'
5 objections thereto; and

6 (b) Setting a briefing and hearing schedule for determination of threshold
7 procedural issues regarding the Avoidance Motions, including, among other things,
8 whether the Avoidance Motions should properly proceed as an adversary proceeding or as
9 a contested matter;

10 13. Determination of these procedural matters is necessary before further
11 proceedings on the Avoidance Motions because the Court's determination of these
12 threshold procedural issues will frame where and how further proceedings (if any) on the
13 Avoidance Motions will take place and under what set of rules and procedures.

14 **III. CONCLUSION.**

15 For all of the foregoing reasons, the Royalty Holders request that, before the
16 Royalty Holders are required to further respond to the Avoidance Motions, the Court first
17 set a Scheduling Hearing to consider the procedural matters discussed above in this Joint
18 Motion. A form of order setting such a hearing is attached to this Motion as **Exhibit A**,
19 and has been separately lodged with the Court.

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DATED this 24th day of October, 2024.

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EXHIBIT A

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**IN THE UNITED STATES BANKRUPTCY COURT
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Case No. 2:24-bk-06368-MCW
Case No. 2:24-bk-06370-EPB
Case No. 2:24-bk-06371-DPC

**ORDER SETTING SCHEDULING
HEARING REGARDING DEBTORS'
AVOIDANCE MOTIONS**

This matter came before the Court pursuant to the *Joint Motion By Royalty Holders Requesting The Court To Set A Scheduling Hearing Regarding Debtors' Avoidance Motions* (the "Joint Motion") filed by: (i) Patriot Gold Corporation ("**Patriot Gold**"); and (ii) Nomad Royalty Company Ltd. ("**Nomad**" and, together with Patriot Gold, the "**Royalty Holders**"). The Joint Motion was filed in relation to the following pleadings filed by the Debtors (the "**Chapter 15 Debtors**") in the above-captioned Chapter 15 cases (collectively, the "**Chapter 15 Case**"):

1 (a) the Debtors’ *Motion To Determine The Nature Of Patriot Gold Corp’s*
2 *Royalty Interest* [Docket No. 52] (the “**Patriot Gold Avoidance Motion**”);

3 (b) the Debtors’ *Motion To Determine The Nature Of Nomad Royalty Company*
4 *Limited’s Interest* [Docket No. 53] (the “**Nomad Avoidance Motion**” and, together with
5 the Patriot Gold Avoidance Motion, the “**Avoidance Motions**”); and

6 (c) the *Motion To Expedite Royalty Determination Motions* [Docket No. 55]
7 (the “**Motion to Expedite**”) in which the Chapter 15 Debtors ask for expedited
8 consideration of the Avoidance Motions.

9 Pursuant to this Joint Motion, the Royalty Holders ask the Court to set a Scheduling
10 Hearing to consider the Motion to Expedite and to set a briefing and hearing schedule
11 regarding certain threshold procedural issues regarding the Avoidance Motions.

12 Based on the Joint Motion, the record in this Chapter 15 Case, and for good Cause
13 appearing,

14 IT IS HEREBY ORDERED as follows:

15 1. The Joint Motion shall be and is hereby granted as provided in this Order.

16 2. The Court will set a Scheduling Hearing (the “**Scheduling Hearing**”) in the
17 Chapter 15 Case on _____, 2024 at ____ a.m./p.m.

18 3. At the Scheduling Hearing, the Court will consider the following matters:

19 (a) The Motion to Expedite and the Royalty Holders’ objections thereto; and

20 (b) Setting a briefing and hearing schedule for determination of threshold
21 procedural issues regarding the Avoidance Motions, including, among other things,
22 whether the Avoidance Motions should properly proceed as an adversary proceeding or as
23 a contested matter.

24 4. For the Avoidance of Doubt, the Royalty Holders are not required to file
25 responses to the Avoidance Motions prior to the Scheduling Hearing.

26 **DATED AND SIGNED AS INDICATED ABOVE**

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