

1 (the “Canadian Court”), approving the proposed sale of the Debtors’ businesses.
2 However, certain alleged Royalty Holders (defined herein) have challenged this
3 sale at every turn, in both the Canadian Court and these chapter 15 proceedings,
4 by filing various objections and adversary proceedings. Maverix, as the senior
5 secured lender in these cases, submits that the proposed sale represents the best
6 option for the Debtors’ estates and the only apparent opportunity for Maverix to
7 recover even a fraction on its claim. The Royalty Holders incorrectly assert that
8 the Shares (as defined herein) are based in the United States, thus requiring this
9 Court to conduct a full section 363 analysis. The Shares pledged to Maverix as
10 collateral are located in Canada, and the Royalty Holders’ expected objections to
11 the sale hold no merit. It is hard to envision how their attempt to “blow up” the
12 proposed sale is in their own best interests. This Court should grant full faith and
13 comity to the Sale Order.

14 **BACKGROUND**

15 KSV Restructuring Inc. is the court-appointed monitor (the “Monitor”) and
16 authorized foreign representative of Elevation Gold Mining Corporation
17 (“Elevation”) and its direct and indirect subsidiaries (collectively, the “Group”),
18 which includes Golden Vertex Corp. (“GVC”).

19 The Group is in default under agreements with Maverix, which is owed at
20 least \$32 million and holds a senior security interest in substantially all assets of
21 the Group, including the shares of GVC owned by Elevation.¹

22 GVC owns the Moss Mine in Mohave County, Arizona (the “Moss Mine”),
23 which is allegedly burdened with certain royalty payment obligations to, *inter*

¹ The Monitor has conducted a security review and determined that Maverix has a valid and enforceable security and has reported in that in its reports to the Court. Maverix is the clear fulcrum creditor in these cases, and it is far and away the largest creditor.

1 *alia*, Patriot Gold Corp. (“Patriot Gold”) and Nomad Royalty Company Ltd.
2 (“Nomad” and, together with Patriot Gold, the “Royalty Holders”).

3 **Canadian Proceedings**

4 On July 30, 2024, a petition under the CCAA was filed before the Canadian
5 Court. On December 17, 2024, the Canadian Court approved the proposed sale of
6 the Debtors’ assets (the “Sale Order”).

7 **Chapter 15 Proceedings**

8 On August 2, 2024, the above-captioned foreign debtors (the “Debtors”) filed
9 a chapter 15 petition in the United States Bankruptcy Court for the District of
10 Arizona (the “Court”).

11 On September 16, 2024, this Court entered the *Order Granting Recognition*
12 *and Related Relief* [Docket No. 49] (the “Recognition Order”), which, among other
13 things, approved the Sale and Investment Solicitation Process (SISP) detailed in
14 the *Verified Petition for Recognition of Foreign Proceeding and Related Relief*
15 [Docket No. 2].

16 On November 18 and 19, 2024, Patriot Gold and Nomad each filed
17 adversary proceedings at Case Nos. 24-00253 and 24-00252, respectively, each
18 seeking a declaratory judgment related to Patriot Gold’s and Nomad’s respective
19 royalty interests.

20 On December 5, 2024, the Monitor filed the Sale Motion, seeking foreign
21 recognition of the *Approval and Vesting Order* (the “Canadian Sale Order”) ~~22~~
22 entered by the Canadian Court on December 17, 2024, which approves that
23 certain purchase agreement dated as of December 2, 2024 (the “Sale Agreement”) ~~24~~
24 between Elevation as seller, and EG Acquisition LLC as purchaser
25 (the “Purchaser”).

26 The principal assets to be transferred to the Purchaser pursuant to the Sale
27 Agreement are the share certificates owned by Elevation which represent 100% of

1 the equity interest in GVC (the “Shares”). The shares are property of the Canadian
2 parent company, and they are held in Canada by Maverix pursuant to a pledge
3 agreement which secures repayment of Maverix’s claims.

4 ARGUMENT

5 **A. The Shares are Intangible Assets “Located” in Canada.**

6 Shares of stock are considered intangible assets because they represent the
7 ownership rights in a company, which is not a physical object you can touch. Even
8 though the certificate itself is a piece of paper, the value lies in the underlying
9 ownership stake, not the paper itself. *See Comm’r of Internal Revenue v. Scatena*,
10 85 F.2d 729, 732 (9th Cir. 1936) (“Shares of stock are intangible and rest in
11 abstract legal contemplation,” while “[a certificate of stock] is merely written
12 evidence . . . of the ownership thereof by the person designated therein and of the
13 rights and liabilities resulting from such ownership.”).

14 While intangible property has no physical location, the Ninth Circuit has
15 held that courts must adopt a “context-specific” analysis that employs a “common
16 sense appraisal of the requirements of justice and convenience in particular
17 conditions.” *In re Blixseth*, 484 B.R. 360, 366–67 (Bankr. App. 9th Cir. 2012)
18 (determining that LLC and LLP interests of Nevada entities were located in
19 Nevada for venue purposes because the only way to attach to those interests was
20 a charging order issued in Nevada) (citing *Office Depot Inc.*, 596 F.3d 696, 702 (9th
21 Cir. 2010). “[A] a single intangible property may be located in multiple places for
22 different purposes.” *Id.* In *Blixseth*, the Ninth Circuit determined that the situs
23 was the appropriate place to bring an action to attach to an interest. *Id.*

24 Section 1502(8) of the Bankruptcy Code also defines the bankruptcy court’s
25 jurisdiction for intangible property as the place where attachment or garnishment
26 may happen. *See* 11 U.S.C. § 1502(8) (defining the phrase “within the territorial

1 jurisdiction of the United States” as “tangible property located within the territory
2 of the United States *and intangible property deemed under applicable*
3 *nonbankruptcy law to be located within that territory, including any property*
4 *subject to attachment or garnishment that may properly be seized or garnished by*
5 *an action in a Federal or State court in the United States”*) (emphasis added).

6 Under AZ UCC § 47-8112(D), such an attachment action must happen in
7 Canada because that is where Maverix holds the stock certificates. AZ UCC §47-
8 8112(D) (“The interest of a debtor in a certificated security for which the certificate
9 is in the possession of a secured party...may be reached by a creditor by legal
10 process upon the secured party.”); *see also* Bari Decl.,² p. 2 (“The stock certificates
11 reflecting [Maverix’s] equity interests are in Maverix’s possession and have been
12 held in Maverix’s possession and control at its Vancouver and Toronto offices.”);
13 Sale Motion, p. 2 (“The principal assets to be transferred to the Purchaser
14 pursuant to the Sale Agreement are the share certificates . . . held in Canada by
15 [Maverix]”).

16 Based on the foregoing practical considerations, the intangible Shares are
17 “located” in Canada, not the United States. The Shares are property of the
18 Canadian parent company, and the pledged Share certificates are held in Canada
19 by Maverix. As such, the Canadian Court has appropriate jurisdiction over the
20 proposed sale of the Shares, and this Court may approve the Canadian Court’s
21 Sale Order.³

² The *Declaration in Support of Motion for Recognition and Enforcement of Canadian Sale and Distribution Order* (the “Bari Declaration”) has been filed contemporaneously herewith.

³ For the avoidance of doubt, Maverix’s position is that, as the senior secured lender, its claim should be paid from any proceeds of the sale that are not otherwise held back.

1 **B. No Section 363 Inquiry is Required for Recognition of the Sale**
2 **Order.**

3 Chapter 15 requires a 363 analysis only where the asset is within the
4 physical jurisdiction of the United States, which is not the case here. In its
5 Application Response filed in the Canadian Proceeding on December 13, 2024,
6 Patriot Gold cites to *In re Crystallex Intn'l Corp.*, in which the bankruptcy court
7 (1) ordered that proceeds of the stock sale should not be distributed without an
8 order from the United States bankruptcy court, and (2) cited to cases applying the
9 section 363 business judgment standard to their respective sales. 2022 WL
10 17254660 (Bankr. D. Del. Nov. 28, 2022) (citing *In re Elpida Memory, Inc.*, 2012
11 WL 6090194, at *7 (Bankr. D. Del. Nov. 20, 2012) and *In re Fairfield Sentry Ltd.*,
12 768 F.3d 239 (2d Cir. 2014)). The current case is distinguishable from *Crystallex*
13 (where the stock garnishment proceeding was pending in Delaware) because the
14 pledged Shares are held in Canada. Furthermore, because the Shares have
15 already been pledged, there is no interest which could be subject to garnishment
16 contemplated by 11 U.S.C. § 1502(8). As stated *supra*, any attachment action
17 would need to happen in Canada, not the United States.

18 Furthermore, bankruptcy courts in the Ninth Circuit have recognized
19 Canadian orders approving the sale of intangible assets by a debtor in a Canadian
20 proceeding without any section 363 inquiry. *See, e.g., In re Hunterwood*
21 *Technologies USA Ltd.*, Case No. 24-00679 (Bankr. E.D. Wa. June 20, 2024)
22 [Docket No. 33] (approving the sale of, *inter alia*, intellectual property without any
23 section 363 inquiry). Similarly, this Court should recognize the Sale Order and
24 allow the proposed sale to proceed.

25 The alternative to the proposed sale is almost certainly a liquidation in
26 which creditors, including the Royalty Holders, will see little to no recovery. The
27 proposed sale is the only means for the Debtors to preserve jobs, whereas blocking

1 the sale is not accretive to any party—including the purported Royalty Holders,
2 who are junior in priority to Maverix.

3 Nomad, in a prior pleading said that the buyer is a Maverix affiliate. *See*
4 *Nomad Royalty Company Ltd.’s Objection to the Group’s Motion to Expedite*
5 *Motion for Summary Judgment Against Nomad Royalty Company Limited*
6 [Docket No. 93], p. 4 (“To the extent a sale of the parent’s stock is sought, and such
7 sale is contingent on extinguishing the royalty holders’ interests, the desire for
8 speed of the would-be and as-yet unidentified buyer, who appears to be an affiliate
9 of the Debtors’ senior lender, cannot trump Nomad’s procedural and substantive
10 due process rights.”). That is a baseless, false claim. The Royalty Holders have
11 also made statements about how the case is principally being run for Maverix’s
12 benefit, when the reality is that Maverix, who has spent the majority of these
13 cases on the sidelines, is not going to recover anywhere near the full amount of its
14 secured funded debt. As such, even under a section 363 analysis, the objections of
15 the Royalty Holders should be set aside, and the proposed sale should be approved
16 as a valid exercise of the Debtors’ sound business judgment.

17 **C. The Proposed Sale Transfers Shares Subject to Any Royalty**
18 **Holder Rights.**

19 Finally, the Royalty Holders’ objection to the proposed sale is premature
20 because the proposed sale has been structured to allow the dispute with the
21 Royalty Holders to be decided post-sale. *See* Sale Motion, p.3 (“Under the revised
22 Sale Agreement, GVC’s agreements with [Patriot Gold] and [Nomad] will not be
23 affected by the transaction and will remain with GVC. The nature and extent of
24 the rights and obligations created by these two agreements will be the subject of
25 further proceedings before this Court following the closing of the transaction.”).

26 In *In re Goli Nutrition Inc.*, 2024 WL 1748460 (Bankr. D. Del. 2024), the
27 bankruptcy court declined to enter an order approving the sale until an ownership

1 dispute had been decided. However, the court noted in dicta that if the proposed
2 transfer was one of a disputed interest, then it *would* be able to approve the CCAA
3 order: “If a purchaser is willing to buy whatever interest the debtor has in the
4 property—in essence, take a quitclaim deed—that could be permissible. The
5 dispute would survive the sale, to be fought now by the purchaser, not the debtor.”
6 *Goli*, 2024 WL 1748460 at *6. Here, the Royalty Holders’ dispute regarding their
7 rights will “survive the sale.” As such, they have no reason to delay or object to
8 this Court’s recognition of the Sale Order.

9 **D. The Royalty Holders Have Been Afforded Due Process.**

10 As a final matter, it should be noted that Patriot Gold and Nomad each
11 have been represented by Canadian counsel before the Canadian Court and have
12 appeared in multiple Canadian hearings related to this matter. Patriot Gold and
13 Nomad have each been provided with due notice of the SISP, and the intended
14 outcome of the process—a going concern sale of the business—has been known to
15 them for several months. Patriot Gold and Nomad were each given due notice of
16 the sale approval hearing, and each of Patriot Gold and Nomad exercised their
17 right to appear in the Canadian Court, along with filing materials with the
18 Canadian Court. Their objections were fully and fairly heard, and both Patriot
19 Gold and Nomad have rights of appeal under the CCAA should they wish to
20 pursue them.

21 In other words, it is too late to argue that the sale should have been
22 conducted in the United States in a plenary U.S. proceeding. That is a collateral
23 attack on the orders of both courts to date, including the orders granting the CCAA
24 application, granting the Chapter 15 application, approving the SISP process
25 (which was clearly a process approved by the Canadian Court and subject to a
26 final approval hearing before the Canadian Court), and the U.S. recognition of

1 that SISP approval via the Recognition Order. Accordingly, this Court should be
2 comfortable recognizing the outcome of the SISP—having already recognized the
3 order constituting the SISP—particularly because of, among other things, the due
4 process afforded to both Patriot Gold and Nomad in the CCAA proceedings.

5 Given the above, recognition of the proposed sale would not be contrary to
6 public policy. For instance, in *In re Ephedra Prods. Liab. Litig. (MuscleTech)*, the
7 court stressed the importance of procedural fairness and due process in the foreign
8 court as central to the analysis of whether recognition violates public policy. 349
9 B.R. 333 (S.D.N.Y. 2006). There, the court held that the Claims Resolution
10 Procedures negotiated in the Canadian Proceeding and enforced through the
11 Chapter 15 proceeding in the U.S. were not manifestly contrary to United States
12 public policy. *Id.* Here, as in *MuscleTech*, any and all requirements of procedural
13 fairness and due process in the foreign court have been satisfied, and this Court
14 may recognize the proposed sale.

15 **RESERVATION OF RIGHTS**

16 Maverix reserves all rights to amend or supplement this Statement or
17 assert any other rights with respect to the Shares, the proposed sale, or the
18 distribution of sale proceeds, as applicable.

19 **CONCLUSION**

20 WHEREFORE, Maverix respectfully requests that the Court enter an order
21 giving effect to the Sale Order in the United States and granting such other and
22 further relief as the Court finds appropriate under the circumstances.

23

December 19, 2024

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9
10 UNITED STATES BANKRUPTCY COURT
11 DISTRICT OF ARIZONA

12 In re

13 ELEVATION GOLD MINING
CORPORATION, et. al.

14 Debtor in a Foreign Proceeding,

Chapter: 15

Jointly Administered

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

(Jointly Administered)

18 **DECLARATION IN SUPPORT OF**
19 **MOTION FOR RECOGNITION**
20 **AND ENFORCEMENT OF**
21 **CANADIAN SALE AND**
22 **DISTRIBUTION ORDER**

23 I, Eban Bari, declare as follows:

24 1. I am a director of Maverix Metals, Inc. ("Maverix"). In my role as
25 director, I am familiar with Maverix's financial reporting, record keeping, and
26 compliance. I make this declaration based on my own personal knowledge, and,
27 if called as a witness, would competently testify to the matters stated herein.
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I declare under the penalty of perjury under the penalty of perjury and the laws of the United States of America that the foregoing is true and correct.

Dated: December 19, 2024



Eban Bari
Maverix Metals Inc., Director