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12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

13 IN AND FOR THE COUNTY OF WASHOE

14 G.R. DAWSON HOLDINGS LTD, a BC
15 Corporation, and as derivative claimant for
16 GRYPHON GOLD CORPORATION,

17 Case No.:

18 Plaintiff,

19 Dept. No.:

20 vs.

21 JAMES O'NEIL, individually; WILLIAM
22 GOODHARD, individually; MARVIN
23 KAISER, individually; TERENCE CRYAN,
24 individually; LISANNA LEWIS,
25 individually; DON TSCHABRUN,
26 individually; and DOES 1-5,

27 **VERIFIED COMPLAINT**

28 Defendants.

29 Plaintiff, G. R. DAWSON HOLDINGS LTD (“Dawson”), in its individual capacity and
30 derivatively on behalf of Gryphon Gold Corporation (“Gryphon”), by and through its counsel
31 of record, WOODBURN AND WEDGE, complains against Defendants, JAMES O’NEIL
32 (“O’Neil”); WILLIAM GOODHARD (“Goodhard”); MARVIN KAISER (“Kaiser”);
33 TERENCE CRYAN (“Cryan”) (collectively, “director defendants”); LISANNA LEWIS
34 (“Lewis” or “officer defendant”); and DON TSCHABRUN (“Tschabrun” or “officer
35 defendant”) (collectively “officer defendants”); and allege as follows:

1 **I. JURISDICTION, VENUE AND PARTIES**

2 1. Pursuant to NRCP 23-1 and NRS 41.520, Dawson make these allegations
3 derivatively on behalf of Gryphon. Plaintiff is a current shareholder and was a shareholder at
4 the time of the actions complained of herein.

5 2. Any effort to have the board of directors enforce the rights asserted herein would
6 be futile. The director defendants were the directors in charge of Gryphon at the time of the
7 wrongful acts alleged herein, so any demand would be futile.

8 3. All four director defendants have claimed to have resigned from office as
9 directors and CEO and so any demand would be futile.

10 4. Defendant, James O’Neil, a resident of Colorado, became a Gryphon director in
11 February 2012 and said he resigned in May 2013. O’Neil became the CEO and said he resigned
12 as CEO in May 2013.

13 5. Defendant, William Goodhard, a resident of Colorado, became a director in
14 November 2012, and said he resigned in 2013.

15 6. Defendant, Marvin Kaiser, a resident of Tennessee, became a director on
16 December 18, 2008, and said he resigned in 2013.

17 7. Defendant, Terence Cryan, believed to be a resident of Texas, became a director
18 on August 4, 2009 and resigned January 1, 2013.

19 8. Defendant, Lisanna Lewis, a resident of Nevada, was a Vice President,
20 Controller, Secretary and Treasurer of Gryphon Gold until June, 2013 and currently is a
21 Manager of Borealis LLC.

22 9. Defendant, Don Tschabrun is a resident of Nevada, became Chief Operating
23 Officer (“COO”) of Gryphon Gold in August 2012 and became COO of Borealis LLC.

24 10. DOES 1-5 were responsible as directors or officers of Gryphon for the wrongful
25 acts alleged herein and this complaint will be amended when these Doe defendants are
26 identified.

27 ///

28 ///

1 within their network, the companies they provide loans to, the structure of their debt financings,
2 the alleged use of misinformation, and the resulting loss to public shareholders. As of October
3 2015, losses to public shareholders of victim companies have totaled \$450 million. *See, Exhibit*
4 **3.**

5 19. This case centers on a gold and silver open-pit heap leach mine located near
6 Hawthorne, Nevada, known as the Borealis Mine. In the 1980s the Borealis Mine was operated by
7 Echo Bay Mines and it crushed, leached and produced approximately 600,000 oz. of gold. For the
8 purpose of showing a pattern and transparency, this complaint also includes a chronology of the
9 public record for three other TSX listed companies – Klondex Mines (symbol: KDX), Fire River
10 Gold (symbol: FAU) and Royal Standard Minerals (symbol: RSM).

11 20. Gryphon was formed in 2003 to acquire, explore and develop certain gold and
12 silver properties in Nevada. In January 2006, Gryphon acquired 100% of the stock interests of
13 a mining entity known as Borealis Mining Company, a Nevada corporation. Until the end of
14 January 2013, Borealis Mining Company, as a wholly owned subsidiary of Gryphon, owned
15 and operated the Borealis Mine.

16 21. In late 2011, Borealis Mining Company started stacking and leaching previously
17 leached material upon a leach pad constructed at the Borealis Mine to extract gold and silver
18 from the material. Borealis was able to collect gold and silver on carbon columns which were
19 sold to a refiner who would extract precious metals. Once an ADR (adsorption, desorption and
20 recovery) system was completed in May 2013, Borealis Mining Company stripped the carbon
21 columns itself and poured and sold doré gold and silver bars to a refiner.

22 22. In late October or early November 2011, O’Neil, the CFO and COO at Jipangu
23 International (“Jipangu”) (owner of the Florida Canyon Mine in Nevada), was asked to join
24 Gryphon as Chief Financial Officer (“CFO”). He accepted the invitation January 3, 2012. O’Neil
25 testified that during his employment with Jipangu, he was involved in negotiating financing
26 transactions with Waterton on behalf of Jipangu.

27 23. On February 3, O’Neil remained CFO and was appointed interim Chief Executive
28 Officer (“CEO”). He was also appointed to Gryphon’s Board of Directors.

1 24. On February 3, Gryphon’s Chief Executive Officer (“CEO”), John L. Key, was
2 terminated. He also resigned as a Director. Also, John K. Key was terminated as General Manager
3 of Borealis Mining Company.

4 25. In early 2012, Gryphon was in need of financing to fund the operation of the
5 Borealis Mine. O’Neil was assigned the task of locating financing for Gryphon. O’Neil introduced
6 Waterton to Gryphon’s Board as a possible source of financing but, on information and belief,
7 ignored other possible sources of financing that were more favorable to the company. For example,
8 Auramet Trading LLC provided a term sheet, a copy of which is attached hereto as **Exhibit 4**.

9 26. In early 2012, O’Neil began negotiations with Waterton for a credit facility for
10 Gryphon in the range of \$15 million.

11 27. Gryphon needed financing before it and Waterton could finalize the \$15 million
12 credit facility. On March 20, 2012, Gryphon obtained a bridge loan facility (\$1.5 million) from
13 Waterton (the “Bridge Loan”) which included the following terms:

- 14 (a) interest was charged at the rate of 15% per annum;
- 15 (b) Gryphon paid a \$30,000 structuring fee;
- 16 (c) Gryphon paid \$100,000 in legal and other fees; and
- 17 (d) Gryphon issued 1,500,000 Series R Warrants to Waterton which,
18 according to Gryphon’s December 31, 2012 10-Q, were estimated to be
19 worth \$137,291.

20 The documents comprising the Bridge Loan and all other financing documents between
21 Gryphon and Waterton that are referenced hereinafter are quite voluminous and, for that reason,
22 are not attached as exhibits to this Complaint. Based on opinion of counsel, the rate of interest
23 was so high that it breached Sec. 347 of the *Criminal Code of Canada*.

24 28. On April 18, 2012, Gryphon entered into a \$15 million Senior Secured Gold
25 Stream Credit Agreement with Waterton (the “Credit Facility”). The Credit Facility was to be
26 used to: (a) pre-pay \$7.5 million in existing secured debentures maturing July 28 and November
27 23, 2012; (b) repay the Bridge Loan; and (c) provide \$4.5 million in working capital and for
28 loan costs. The terms of the Credit Facility included:

- 1 (a) A term of two years;
- 2 (b) Interest at 5% per annum;
- 3 (c) Gryphon paid a 1% overall structuring fee;
- 4 (d) Gryphon paid a 1% additional structuring fee on each Advance;
- 5 (e) Gryphon total “debt offering costs” of \$585,091;
- 6 (f) Gryphon issued 14,062,500 Series T Warrants to Waterton which,
- 7 according to Gryphon’s December 31, 2012 10-Q, were estimated to be
- 8 worth \$1,039,566; and
- 9 (g) The Credit Facility included a discounting provision whereby each \$1
- 10 principal repayment only reduced the outstanding principal by \$0.80.
- 11 (An implied rate of 25% over 2 years but higher if the term is foreshortened.)

12 29. On April 18, 2012, Gryphon also executed a Gold and Silver Supply Agreement
13 (the “Supply Agreement”) giving Waterton the right (but not the obligation) to purchase all of
14 the Borealis Mine’s production until it ceased operation. The Supply Agreement further gave
15 Waterton a 1% discount on all purchases for as long as the loan was outstanding plus three
16 years, or after the sale of 150,000 ounces of gold, whichever was later.

17 30. On information and belief, the amount of the Credit Facility was determined
18 either by O’Neil or Waterton but it was short of Gryphon’s actual needs. Borealis Mining
19 Company was in desperate need of appropriate and properly sized mining equipment, such as
20 larger trucks and loaders. The Credit Facility did not provide funds for the equipment that was
21 essential to the mining operations, yet it did enable Gryphon to prepay existing debt in advance
22 of its maturity and enable Waterton to prioritize its security claim by removing all other
23 lenders. The directors must have known that the funding was insufficient to purchase
24 appropriate mining equipment and that they agreed to accept new capital with an effective
25 minimum cost of 23.5% per annum to prepay existing capital costing 10%.

26 31. During 2012, Borealis Mining Company simply pushed previously leached and
27 processed material onto a crusher and loaded the heap leach pad with the use of conveyors.
28 Borealis Mining Company leached the pads to extract gold and silver. Throughout the entire

1 time Jim O’Neil and the Board were responsible for operations at Gryphon Gold, Borealis
2 Mining Company only processed previously leached material with a grade that was roughly
3 1/10th that of the fresh ore available on the property. Although they were undersized, Gryphon
4 did own and have access to two Volvo articulated dump trucks capable of hauling fresh ore.

5 32. In the summer of 2012, Gryphon needed more funds and, once again, on
6 information and belief, O’Neil suggested Waterton as the source for additional funds and the
7 other directors did not question this.

8 33. On September 24, 2012, the Credit Facility was amended to increase the total
9 principal amount from \$15 million to \$20 million (the “First Amendment”). In a press release,
10 Cheryl Brandon, Portfolio Manager at Waterton, stated, “We are pleased with the progress
11 Gryphon Gold has made at its flagship Borealis Project. As a result of the expansion of the
12 heap leach pad and construction of the ADR processing facility, the company is well positioned
13 to continue to increase production and benefit from lofty gold prices. We have established a
14 good working relationship with management and look forward to continuing to support
15 Gryphon on future expansion opportunities.” James T. O’Neil Jr., Chief Executive Officer and
16 Interim CFO of Gryphon Gold Corporation, stated, “We believe that the additional financing
17 and amended repayment schedule provide us with substantial financial flexibility to fund our
18 investment in expanding our production capacity without impeding our working capital that is
19 generated through gold sales. The additional financing will support the bonding requirement
20 of our incremental fluid flow, as well as the purchase of an additional carbon stack and pumps.
21 We continue to make progress at the Borealis project. We are pouring gold weekly and we
22 continue to work on the expansion of the heap leach pad.”

23 Under the First Amendment:

- 24 (a) the term of loan was extended to November 31, 2014, for a total of 31
25 months;
- 26 (b) The structuring fee on each additional Advance was increased to 2%
27 (which only applied to the additional \$5 million advanced);
- 28 (c) Gryphon paid total “amended debt offering costs” of \$705,649; and

1 (d) The Supply Agreement was amended to allow Waterton to purchase all
2 of the Borealis Mine's production at a 3% discount to current market
3 prices.

4 34. After the First Amendment was finalized, O'Neil made arrangements to lease
5 the equipment that was necessary for the proper and efficient operation of the Borealis Mine.
6 However, to the surprise of other members of Gryphon's Board, O'Neil testified that he
7 cancelled the orders for the properly sized equipment and entered into a transaction to purchase
8 much larger Caterpillar trucks and loaders. The Caterpillar equipment was costlier than the
9 equipment originally ordered and was much larger than was necessary for the operations at the
10 Borealis Mine. O'Neil advised the other Board members that he had obtained Waterton's
11 "consent" for the purchase of the oversized equipment. The other Board members took no
12 action to change the order.

13 35. The discovery disclosed that the CEO, O'Neil, and COO, Tschabrun, failed to
14 implement a plan to mine fresh ore, which could have increased revenues.

15 36. O'Neil, Gryphon's Board and Waterton knew the proceeds of the Credit Facility
16 and the First Amendment were insufficient to fund the Caterpillar equipment purchase.

17 37. Waterton knew Gryphon was considering a \$5 million private placement to meet
18 Borealis Mining Company's operational needs in the fall of 2012. On or about October 22,
19 2012, Waterton submitted a document entitled "Gryphon Gold Restructuring Proposal" (the
20 "Restructuring Proposal") to O'Neil for presentation to Gryphon's Board. A copy of the
21 Restructuring Proposal is attached hereto as **Exhibit 5**.

22 38. On information and belief, Waterton's purpose in proposing the Restructuring
23 Proposal was to convince Gryphon's Board that a conversion of Waterton's debt for equity in
24 a new joint venture with Gryphon would be more beneficial to Gryphon and its shareholders
25 than a \$5 million private placement, and to convince the Gryphon board to abandon the \$5
26 million private placement.

27 39. Pursuant to the Restructuring Proposal, Waterton proposed to convert 100% of
28 its existing debt to a 60% interest in a newly formed joint venture. Gryphon would receive a
40% interest in the new joint venture. According to the Restructuring Proposal, Waterton's

1 60% interest would be based on existing \$25 million debt to current "enterprise value" of
2 Gryphon. *See, Exhibit 5*, p. 3. Based upon this exchange ratio, Waterton set Gryphon's
3 enterprise value at approximately \$41.7 million.

4 40. From commencement of operations at the Borealis Mine, gold recoveries were
5 lower than expected due to only processing previously leached reserves. In the Restructuring
6 Proposal, Waterton's projections of future performance downgraded some of Gryphon's ore
7 reserves to reflect the actual results of operations. *See, Exhibit 5*, p. 5. In other words,
8 Gryphon's \$41.7 million enterprise value was based upon the downgraded gold content of ore.

9 41. The Restructuring Proposal also forecast that Gryphon's 40% interest in the
10 new joint venture would generate cash flow for Gryphon of about \$4.6 million in 2013 and
11 another \$12.2 million in 2014. *See, Exhibit 5*, p. 7.

12 42. Waterton's cash flow projections in the Restructuring Proposal were based upon
13 a gold price of \$1,400 per ounce. *See, Exhibit 5*, p. 5. When the Restructuring Proposal was
14 submitted to Gryphon, the price of gold was over \$1,600 per ounce. At \$1,600 gold, the cash
15 flow projections would have been higher than suggested by Waterton and the enterprise value
16 of Gryphon would also have been higher than the indicated \$41.7 million.

17 43. If the deal presented by Waterton to the Gryphon Board in the Restructuring
18 Proposal closed: (1) the Waterton debt would have been completely eliminated; (2) Gryphon
19 would still have a 40% equity interest in the entity that owned the Borealis Mine; (3) its 40%
20 membership interest would not be subject to further dilution by reason of an inability to pay a
21 debt to Waterton; (4) Waterton would not have a \$13.8 million claim against Gryphon; and (5)
22 Gryphon would be debt free.

23 44. After the Restructuring Proposal was presented by Waterton, the Gryphon Board
24 did not proceed with the \$5 million private placement. During this entire process, Murray
25 Bockhold, an Investment Advisor at Richardson GMP, was on record with both James O'Neil
26 (joint CEO/CFO) and Marvin Kaiser (Chairman of the Board) as being available to provide
27 alternate sources of capital that would enable Gryphon to retain its 100% interest in BMC. *See,*
28 **Exhibit 6** (emails 2 through 9, 12 and 13). At no time did O'Neil or Kaiser advise Richardson

1 GMP that the Board had authorized a \$5 million private placement, nor did they engage in bona
2 fide discussions or ask for a term sheet from Richardson GMP.

3 45. Based upon the documents produced in discovery, the paper trail for the joint
4 venture proposed by Waterton in the Restructuring Proposal inexplicably ended in late
5 November 2012. Instead of proceeding with a restructuring of Gryphon's debt to Waterton on
6 the terms of the Restructuring Proposal, Gryphon's Board entered into a different debt for
7 equity swap that led to Gryphon's financial demise in less than 6 months. Gryphon's Board
8 appears to have:

- 9 (a) ignored the Restructuring Proposal;
- 10 (b) Concealed the debt for equity transaction from shareholders;
- 11 (c) Intentionally ignored Richardson GMP's repeated attempts to provide
12 alternate financing; and
- 13 (d) Taken no steps to preserve Gryphon's value.

14 46. On January 18, 2013, the Credit Facility was amended to increase the total
15 principal amount from \$20 million to \$23 million (the "Second Amendment"). With the \$3
16 million in additional funds, Gryphon could have met its current payment obligations to
17 Waterton.

18 47. On January 30, 2013, Waterton and Gryphon entered into a debt for equity
19 transaction pursuant to which: (1) Borealis Mining Company was converted from a Nevada
20 corporation to a Nevada limited liability company (BMC, LLC); and (2) Waterton obtained a
21 60% controlling interest in BMC, LLC in exchange for Waterton writing off only \$17 million
22 of Gryphon's then outstanding obligations to Waterton of which only \$13.3 million was
23 allocated to principal (the "January 2013 Transfer"). The January 2013 Transfer was reflected
24 in a further amendment to the Credit Facility, also dated January 30, 2013 (the "Third
25 Amendment"), under which:

- 26 (a) the principal amount outstanding was reduced to \$6,650,000, resulting
27 in a reduction of \$13.3 million to the principal amount outstanding at that
28 time;

- 1 (b) Gryphon was permitted to repay principal amounts in cash, gold or units
2 of Borealis. The latter was a fixed percentage of the remaining 4,000,000
3 shares (representing 40%) held by Gryphon in Borealis; and
4 (c) Principal repayments commenced January 31, 2013, and ended
5 November 31, 2014.

6 48. The debt equity transaction was entered into prior to Gryphon Gold being in
7 default of its debt obligations to Waterton and, given the \$3 million injection (the “Second
8 Amendment”), was entirely unnecessary. Bockhold and Jerry Baughman (US resident, ex-
9 Director of Gryphon Gold and single largest shareholder) met with Jim O’Neil at Gryphon’s
10 office in Carson City on Sunday, January 27, 2013, where they presented alternative financing.
11 *See, Exhibit 6* (email 4). Had O’Neil and the board pursued Richardson GMP’s proposal
12 Gryphon could have avoided the debt equity swap and retained its 100% interest in the Borealis
13 Mining Company.

14 49. Instead, and to accomplish the January 2013 Transfer, Gryphon and Waterton
15 entered into a Contribution Agreement, dated January 30, 2013, that reflected Waterton’s
16 acquisition of 60% of the membership interests in BMC, LLC and the rights and obligations of
17 Gryphon and Waterton as members of the newly created limited liability company. Hereinafter,
18 the Bridge Loan, the Credit Facility, the Supply Agreement, the First Amendment, the Second
19 Amendment, the Third Amendment and the Contribution Agreement may be collectively
20 referred to as the “Waterton Loan Documents.”

21 50. Pursuant to the Third Amendment and the Contribution Agreement, Gryphon
22 was obligated to make principal payments and capital calls, which it never had any prospect of
23 being able to pay. *See, Exhibit 6* (email 5). Pursuant to the Contribution Agreement, Gryphon
24 was required to make an initial capital contribution of \$1.6 million which it did not have nor
25 was it matched by its partner, Waterton, with their corresponding \$2.4 million contribution. As
26 a result, and as part of the January 2013 Transfer, Waterton provided \$4 million, purportedly
27 of new funding, as a default loan (the “Default Loan”) with highly dilutive payment provisions
28 (10% in the first month to 40% for the fourth month onward). In other words, the Gryphon
Board, and O’Neil by his own admission, agreed to a transaction whereby Gryphon was in

1 default of the terms of the Contribution Agreement as soon as it was signed. It was a foregone
2 conclusion that Gryphon would not be able to meet its obligations under the Contribution
3 Agreement and an additional six percent (6%) of Gryphon's membership interests in BMC,
4 LLC would be transferred to Waterton in a matter of months (the "Subsequent Transfers").

5 51. The interest rate on the \$4 million Default Loan was not disclosed in Gryphon's
6 public disclosure of the new "Joint Venture":

7 [https://www.sec.gov/Archives/edgar/data/1262751/000106299313000485/exhibit99-
8 1.htm](https://www.sec.gov/Archives/edgar/data/1262751/000106299313000485/exhibit99-1.htm)

9 52. Despite being requested, Waterton has not provided evidence of the \$4 million
10 Default Loan actually being received by BMC LLC. On information and belief, Waterton never
11 advanced the \$4 million because the Default Loan amount included the \$3 million already
12 advanced under the Second Amendment. In other words, \$3 million of the \$4 million Default
13 Loan was double counted and the remaining \$1 million was never advanced, yet Gryphon paid
14 interest and suffered dilution from both the Second Amendment and the Default Loan as if it
15 had received \$7 million.

16 53. The proposal offered by Waterton by way of the Restructuring Proposal was
17 significantly more beneficial to Gryphon than the debt for equity swap resulting in the January
18 2013 Transfer for the following reasons:

- 19 (a) Under the Restructuring Proposal, the Waterton debt would have been
20 completely eliminated, but under the January 2013 Transfer, the
21 principal amount of the Waterton debt remained at \$6.65 million;
- 22 (b) Under the Restructuring Proposal, Gryphon would have received a 40%
23 interest in BMC, LLC that was not subject to dilution or loss by reason
24 of its inability to pay more on the Waterton debt, but under the January
25 2013 Transfer, Gryphon was at risk of losing all of its membership
26 interests in BMC, LLC. In fact, prior to the filing of the Bankruptcy
27 Case, Gryphon lost an additional 6% of its membership interests in
28 BMC, LLC to Waterton;
- (c) Under the Restructuring Proposal Waterton indicated Gryphon would
have cash flow from BMC, LLC totaling \$16.8 million in 2013 and 2014.
Under the January 2013 Transfer, Gryphon has received no cash flow
from BMC, LLC; and

1 (d) Under the Restructuring Proposal, Gryphon had a future. Under the
2 January 2013 Transfer documents, Gryphon was obligated to make debt
3 payments and capital calls which it never had any prospect of being able
4 to pay. Gryphon was in default of the terms of the Contribution
Agreement as soon as it was signed and it was set on a course of near
immediate financial demise.

5 54. O'Neil was one member of a three member Board of Directors for Gryphon
6 during January of 2013. The other two Directors were Kaiser and Goodhard. Director, Terence
7 Cryan, resigned from the Board effective on January 1, 2013.

8 55. Goodhard and Kaiser have testified that the responsibility for finding financing
9 for Gryphon rested with O'Neil. Goodhard and Kaiser have also testified that they cannot recall
10 the Restructuring Proposal. However, Kaiser received a copy of the Restructuring Proposal on
11 October 22, 2012. *See Exhibit 5.*

12 56. Waterton received 60% of the membership interests in BMC, LLC in return for
13 forgiving \$17 million in loans to Gryphon. The exchange ratio in the debt for equity transaction
14 was based on Waterton's internal valuation of Borealis Mining Company, the wholly-owned
15 subsidiary of Gryphon that owned 100% of the Borealis Mine.

16 57. On information and belief and based on the discovery, it appears that the
17 Gryphon Board, without objection, allowed Waterton to dictate the terms of the January 2013
18 Transfer, including the valuation of Gryphon stock. The valuations placed on Gryphon mining
19 assets, notably their gold reserves, were significantly lower than their fair values. There is no
20 evidence that the Gryphon Board made any effort to find an alternative valuation or alternative
21 financing. During discovery, the defendants were unable to produce a record of any
22 negotiations, outside of those with Waterton, in late 2012 or January 2013.

23 58. There is no evidence that the Gryphon Board did anything except intentionally
24 allow Waterton to create agreements that Gryphon had no chance of performing and would
25 inevitably lead to Gryphon's loss of all value. In discovery, all three directors testified they
26 understood they would continue to receive their directors' fees if the Waterton Transfer went
27 forward. The board also approved a pay increase for O'Neil on January 1, 2013, changing his
28 annual salary from \$250,000 to \$300,000.

1 59. During the course of the Bankruptcy Case, the Trustee engaged Meridian
2 Advantage (“Meridian”) to review the Waterton Transactions and Borealis Mining Company’s
3 books and records. Meridian issued a report on November 20, 2014, a copy of which is attached
4 hereto as **Exhibit 7**. Regarding the January 2013 Transfer, Meridian reported that not all
5 professional accounting standards were followed and/or documented. Specifically:

- 6 (a) Many documents and information that one would expect to be
7 maintained in the ordinary course of business are conspicuously absent.
- 8 (b) In addition to missing information and documents, Gryphon’s
9 accounting books and records were not maintained to the level and
accuracy as would be expected in a publicly held company.
- 10 (c) The fair value adjustment recorded for the January 2013 Transfer which
11 was the basis for the final Member’s Equity Valuation in conversion of
12 Borealis Mining Company to BMC LLC and resulted in a portion of
Waterton’s debt forgiveness being converted to equity in BMC LLC is
incorrect and/or incomplete.
- 13 (d) The adjustments and the recording of the “adjusted” balance sheet
14 amounts fail to properly determine and report the fair value of many if
15 not most of the assets and liabilities shown on the BMC, LLC balance
sheet, including intangible assets.
- 16 (e) The value of the mining deposits and reclamation liability should be
17 valued by a qualified appraiser/mining consultant or similarly qualified
professional, but they were not.
- 18 (f) The following balance sheet items should have been appraised by a
19 qualified real estate and/or equipment appraiser:
- 20 1. Building, Office
21 2. Trailer-Site
22 3. Machinery & Equipment
23 4. Office Furniture and Computer Equipment

24 These items were recorded at cost, including offsetting accumulated
depreciation, which is not fair value.

- 25 (g) When accounting for fair value, it is critical that each asset and liability
26 reported on the balance sheet be individually considered for adjustment.
27 Equally as important is to separately identify and determine the fair value
for each intangible asset that exists but is not reported on the balance
sheet. Gryphon’s records do not document that necessary procedures
28 were performed and support the required adjustments.

1 60. PricewaterhouseCoopers Canada (“PwC”), the Canadian based offices of an
2 international and well respected accounting firm, has also evaluated the January 2013 Transfer
3 and the Subsequent Transfers for fairness. PwC prepared an Initial Report dated April 28, 2015.
4 The report was filed under seal in the Bankruptcy Case (*Docket No.359*) as it referred to
5 documents Waterton claimed to be confidential, and, therefore, cannot be attached hereto. Non
6 confidential excerpts from the PwC report previously filed with the Bankruptcy Court include:

- 7 (a) It is unclear if the Debtor pursued an alternative to the Waterton
8 financing.
- 9 (b) Jim O’Neil, the Debtor’s CEO and CFO at all material times, came to
10 the debtor from a company heavily indebted to Waterton, then after the
11 course of the Debtor’s destruction was fully set in place, he left to go to
12 his original employer.
- 13 (c) Subject to actuarial verification, Denton’s has concluded the interest
14 rates on the Waterton loans were likely in violation of the *Canadian
15 Criminal Code* which limits real interest to 60% per annum. The
16 remedies under Canadian law range from reducing the rate to 60%, to
17 declaring the transaction void ab initio.
- 18 (d) An agreement was in place for Waterton to loan the Debtor an additional
19 \$3 Million for operating expenses but Waterton withheld it until it put in
20 place the agreement deeming the Debtor to be in default.
- 21 (e) The Roth ‘fairness’ opinion was so limited as to be virtually
22 meaningless.
- 23 (f) There was no independent valuation of the Mine at the time of the JV
24 Transaction (January 2013 Transaction).
- 25 (g) At the time the JV Transaction was done, it does not appear that the
26 Debtor was in default, but the agreement put the Debtor in default as
27 soon as it was signed.
- 28 (h) The JV Transaction required the Debtor to make an initial \$4 Million
capital contribution, but not Waterton. Since the Debtor did not have \$4
Million, it was in default the day the transaction was executed.
- (i) The exchange ratio for the January 2013 Transfer was based on an
internal valuation of Borealis Mining Company rather than an
independent third party valuation.
- (j) The valuations for the January 2013 Transfer were based on estimated
financial statement numbers rather than Borealis Mining Company’s
actual financial records at the time of the transaction. The valuations

1 also included deductions for some of Gryphon's liabilities that were not
2 assumed by BMC, LLC.

3 (k) For purposes of the January 2013 Transfer, Borealis Mining Company
4 was valued at \$27.4 million, but there was no independent valuation of
5 Borealis Mining Company prepared at the time of the Borealis
6 Transaction.

7 (l) The Waterton valuation, which is dated January 22, 2013, was not
8 independently verified and is based primarily on estimated book values
9 for Borealis Mining Company assets and liabilities.

10 (m) An independent and objective valuation should have been performed to
11 ensure that the then current values of all of Borealis Mining Company
12 assets and liabilities, particularly the mineral claims, had been properly
13 determined for the purposes of calculating the exchange ratios for the
14 January 2013 Transfer.

15 (n) The JV Transaction virtually guaranteed Waterton would own 100% of
16 Borealis within six months.

17 61. Bockhold provided PwC with copies of all correspondence with Gryphon Gold
18 prior to the release of their Initial Report. *See, Exhibit 6.*

19 62. At the time of the January 2013 Transfer, Gryphon obtained a fairness opinion
20 from Roth Capital Partners ("Roth"). Roth was asked to issue its opinion regarding the fairness
21 of the January 2013 Transfer from a financial point of view.

22 63. Shortly before the January 2013 Transfer closed, Roth provided Gryphon with
23 a chart indicating that it believed the value of a 60% interest in Gryphon would be between
24 \$18.2 million and \$26.2 million. A copy of that valuation chart (the "First Roth Valuation") is
25 attached hereto as **Exhibit 8**. Before the January 2013 Transfer closed, however, Roth provided
26 Gryphon with another chart in which it changed the range of value of a 60% interest in Gryphon
27 to between \$15.6 million and \$26.2 million. A copy of that valuation chart (the "Second Roth
28 Valuation") is attached hereto as **Exhibit 9**.

64. The First Roth Valuation and the Second Roth Valuation (collectively the "Roth
Valuations") attempt to value Gryphon, whereas the January 2013 Transfer is based on the
value of Borealis Mining Company, a subsidiary of Gryphon. Roth did not adjust the

1 information provided by Gryphon to exclude the non-Borealis assets (*e.g.*, Nevada Eagle) and
2 liabilities or the projected non-Borealis Mining Company revenues, expenses and cash flows.

3 65. The Roth Valuations are based on the flawed analysis that the value of a
4 company is based on the present value of future benefits. Valuation theory dictates that the
5 value of a company is the higher of either the net present value of its projected future after tax
6 cash flows or its underlying net asset value. The Roth Valuations do not take into consideration
7 the fair value of Borealis Mining Company's underlying assets, including newly purchased
8 plant and equipment (conveyors, loaders, crusher, ADR facility), \$8 million in reclamation
9 bonds and its mining properties.

10 66. The valuation range of Gryphon as shown on the Second Roth Valuation is from
11 \$8.6 million to \$47.1 million. The Roth Fairness Opinion does not explain this very wide range
12 of value.

13 67. Roth issued its "fairness opinion" on January 29, 2013, a copy of which is
14 attached hereto as **Exhibit 10**. The Fairness Opinion is based upon the Second Roth Valuation.
15 Roth's written opinion that the January 2013 Transfer was fair to Gryphon was flawed and
16 incorrect because:

- 17 (a) It did not verify the accuracy of any of the financial information upon
18 which its opinion was based.
- 19 (b) It assumed the financial information it reviewed, mostly obtained from
20 Gryphon, was accurate and complete in all material respects.
- 21 (c) It assumed no responsibility to conduct any independent evaluation or
22 appraisal of Gryphon's assets or liabilities.
- 23 (d) It was not provided with any valuations or appraisals and, therefore,
24 could not have evaluated the true values of Gryphon's assets and
25 liabilities.
- 26 (e) The Second Roth Valuation upon which it is based is also flawed.
- 27 (f) It does not explain why a value of \$17 million for a 60% interest in BMC,
28 LLC is fair to Gryphon when the Roth Valuations indicate a 60% interest
could be worth as much as \$26.2 million.

///

1 (g) The mid-point range of value shown on the Second Roth Valuation is
2 about \$27.8 million (the low is \$8.6 million and the high is \$47.1
3 million). The Fairness Opinion does not explain why a value of \$17
million for a 60% interest in BMC, LLC is fair to Gryphon.

4 (h) It expressed no opinion as to the underlying valuation of Gryphon.

5 68. These were the same flaws in the January 2013 Transfer that were highlighted
6 by Meridian and PwC.

7 69. Under the Restructuring Proposal, Waterton proposed to forgive \$25 million in
8 debt for a 60% membership interest in the new joint venture to be performed. This equates to
9 an enterprise value of \$41.7 million. Roth's top value for a 60% interest in BMC, LLC, \$26.2
10 million, is consistent with an enterprise value of \$41.7 million. Roth's mid-range value for
11 Gryphon, \$27.8 million, is also consistent with an enterprise value of \$41.7 million. Roth
12 nonetheless opined that a forgiveness of debt of only \$17 million was a fair exchange for a 60%
13 interest in BMC, LLC. A \$17 million forgiveness of debt for a 60% interest in a company
14 equates to an enterprise value of only \$28.3 million.

15 70. An entity acquiring a controlling interest in another company should pay a
16 premium for the control of the acquired company. Waterton did not pay a control premium for
17 its 60% membership interest in BMC, LLC.

18 71. Based upon, inter alia, the Waterton Restructuring Proposal and the Roth
19 Valuations, the January 2013 Transfer approved by the Gryphon Board was not fair to Gryphon
20 and its shareholders.

21 72. Based upon, inter alia, the Waterton Restructuring Proposal and the Roth
22 Valuations, Gryphon did not receive reasonably equivalent value for the 60% equity interest in
23 BMC, LLC it transferred to Waterton pursuant to the January 2013 Transfer.

24 73. Because Gryphon did not receive reasonably equivalent value for the 60% equity
25 interest it transferred to Waterton, it likewise did not receive reasonably equivalent value for
26 the additional 6% equity in BMC, LLC, it transferred via the Subsequent Transfers because
27 those transfer ratios were calculated on the same flawed ratios used for the January 2013
28 Transfer.

1 74. Gryphon's shareholders were not advised of the January 2013 Transfer prior to
2 it occurring, nor was there a public disclosure prior to the transaction closing. After the January
3 2013 Transfer closed, the director defendants refused to provide necessary details of what had
4 occurred and there are significant discrepancies between Gryphon's public disclosure in their
5 SEC filings, Bockhold's email history as presented to PwC, Gryphon's Q3/2013 conference
6 call and the facts disclosed in the Bankruptcy Case and in testimony. *See, Exhibits 6 and 13.*

7 75. Neither O'Neil nor the Gryphon Board owned common shares. *See, Exhibit 6*
8 *(email 5), Exhibit 13, 00:48:59.*

9 76. O'Neil committed to Bockhold that Gryphon would not borrow more from
10 Waterton in late 2012. *See, Exhibit 6* (email 6, p 2). However, Gryphon obtained \$3 million
11 from Waterton under the Second Amendment and purportedly \$4 million under the Default
12 Loan in mid-January 2013.

13 77. The Bridge Loan, Credit Facility and Default Loan are governed by Ontario and
14 Canadian law. Pursuant to the *Canadian Criminal Code* §347 (1985), it is illegal to enter into
15 an agreement that provides for the recovery of interest at a rate greater than 60% per annum.

16 78. George and Bell Consulting, a firm of Canadian consulting actuaries, issued its
17 opinion on July 16, 2015, in which it opines that: (a) when the Bridge Loan was entered into, it
18 carried an effective interest rate of 279.48%; (b) as the Bridge Loan was paid, the total effective
19 interest rate increased to 1,059.37%; and (c) taking all of the charges as provided under
20 Canadian law into consideration, the effective interest rate on the January 2013 Transfer was
21 77.01%. A copy of the George and Bell Consulting opinion letter is attached hereto as **Exhibit**
22 **11.**

23 79. Bockhold and Baughman were advised by O'Neil that the rate of interest on the
24 \$4 million Default Loan was 10% per month. Bockhold advised O'Neil that was in breach of
25 the *Canadian Criminal Code*. O'Neil stated that "Waterton are sharks looking for blood" *See,*
26 **Exhibit 6** (email 5). Yet, he ignored Bockhold's offer to refinance the Waterton loan at 'market'
27 rates (at or near 10% per annum).

28 ///

1 80. Allegedly, Gryphon was seeking financing to maintain their remaining 40%
2 stake. Thomas Skinner, a shareholder residing in Newfoundland, Canada with no association
3 to Bockhold, received a reply from O’Neil on February 5, 2013 stating, “I am optimistic that
4 we will be able to raise the needed funds.” *See, Exhibit 12.* A complete history of Thomas
5 Skinner’s correspondence with Lewis and O’Neil between September, 2012 and June, 2013 is
6 provided in **Exhibit 12.**

7 81. Gryphon hosted a Q3/2013 recorded conference call on February 15, 2013 to
8 discuss the new Joint Venture with Waterton. There are multiple instances of false and
9 misleading public disclosure in breach of securities law. For example, O’Neil statements
10 include:

- 11 (a) “Bankruptcy, including a DIP financing, would have likely removed all
12 of the Gryphon shareholders ownership interest in Borealis.”
- 13 (b) “Obviously our objective is to repay the indebtedness and to continue our
14 ownership percentage.”
- 15 (c) “We believe this agreement not only strengthens Gryphon today but in
16 the long run will more quickly realize the full potential the Borealis
17 property has to offer.”
- 18 (d) “...[W]e expect them to, in a matter of months, I would say to . . . be up
19 to that 30,000 range [annual gold ounce production] that we talked about.
20 . . . We believe that potential is significantly north of that 30,000
21 [oz./year].”
- 22 (e) “We don’t have a lot into drilling right now we have enough ore already
23 scheduled out in front of us for several years.”

24 **See Exhibit 13.**

25 82. Inaccurate and/or misleading statements from Tschabrun include:

- 26 (a) “As a reminder Borealis submitted an application permit to increase
27 existing solution flow which is currently under way with . . . the Nevada
28 Department of Environmental Protection. . . . Although the hope is to
have the permit within the next month we have no control over that
schedule.” [Gryphon did have control of timing.]
- (b) “With the addition of fresh ore it is our expectation that Borealis will be
able to increase overall recovery rate and reduce cash cost per ounce

1 produced.” [Discovery disclosed that Gryphon knew that there was no
2 plan to mine fresh ore. As COO, Tschabrun owed a duty to help Gryphon
3 survive by mining fresh ore.]

4 **See Exhibit 13.**

5 83. Comments from shareholders include the following quotes:

6 **Q:** There was no requirement by the SEC or TMX to take the 60%
7 sale to the shareholders for approval?

8 **AJTO:** No, not, not based on the advice that I got.

9 **Q:** Did you publish the fairness opinion?

10 **AJTO:** No. Not required to.

11 **Q:** Can you give us a date when do we expect that fresh ore can be
12 placed on the heaps?

13 **ADT:** We hope to be in fresh ore by the latter part of March early part
14 of April.

15 **Q:** Why was that converted into, exclude my ignorance on this, but
16 why was that converted into an LLC, Borealis?

17 **AJTO:** It just made the restructuring easier. Most, most joint ventures
18 that I am aware of are LLC. It just makes it easier to function that
19 way.

20 **Q:** I have the press release in my hand [dated Dec 5 2012 stating
21 they had not received the water flow permit, as restated in this
22 conference call].

23 **AJTO** Murray, Murray this can go on all day.

24 **MB** I have the permit in my hand from NDEP and it's dated
25 November 2 and it says this letter is to advise Borealis that NDEP
26 approves the modifications.

27 **Q:** How much is Waterton getting in terms of their finance rate?

28 **AJTO:** I think the interest rate is probably around... a little over 25
percent.

Q: Isn't that exorbitant, make it un-payable. The whole finance deal
rather unworkable and therefore our shares are going to be
diluted. There are a lot of questions but quite frankly I smell a
rat.

29 **See Exhibit 13.**

30 84. O'Neil cut off the call long before shareholders were through asking questions.

31 **See Exhibit 13.**

32 85. In a meeting with Bockhold and Lewis in Vancouver January 21, 2012, O'Neil
33 cited \$4 million of aged payables and vendors threatening lawsuits plus the unexpected
34 breakdown of the boiler as triggers for the sudden need to contemplate the January 2013
35 Transfer. **Exhibit 6** (email 6, p.2.). He reiterated this excuse in the Q3 conference call. **Exhibit**

36 **13, 00:03:01.**

1 86. On January 30, 2013 in a meeting in Carson City, Lewis provided Bockhold with
2 a copy of the Vendor Aged Payables dated January 30, 2013. *See, Exhibit 36.* Total payables
3 were \$2,162,107 of which, according to Lewis, \$1,073,728 were in dispute because Gryphon
4 was challenging 2 of the vendors that provided construction services for the newly build ADR
5 facility. Current payables were \$451k, 31-60 - \$381k, 61-90 - \$205k. Outstanding payables
6 91 days+ net of the payments in dispute were only \$50,982.00.

7 87. Lewis escorted Bockhold to the mine site January 31, 2013 for a site tour.
8 Bockhold met with Tschabrun and queried him about the boiler breakdown. “Don, it’s a piece
9 of equipment and you are the mine manager, surely there is a reason it broke down. What’s the
10 reason?” Tschabrun claimed he didn’t know what caused the boiler failure and advised it was
11 sent for inspection. When asked where it was sent for inspection he claimed he didn’t know.

12 88. Gryphon’s legal counsel for the January 2013 Transfer was Philippe Tardif of
13 Bordner Ladner Gervais LLP, a prominent Canadian law firm. On information and belief, Tardif
14 also acted in a manner favorable to Waterton. There is no evidence that Gryphon engaged truly
15 independent legal advice. Bockhold provided Tardif, O’Neil, Kaiser, Goodhard and former
16 Gryphon director Terrance Cryan detailed explanations of his due diligence. *See, Exhibit 6*
17 *(emails 6, 7, 10).* Both Tardif and the director defendants owed a fiduciary duty to Gryphon. As
18 Gryphon counsel, Tardif had a duty to Gryphon to advise against the January 2013 Transfer
19 once he became aware of Bockhold’s evidence. The director defendants were aware of the same
20 evidence and their inaction was also in breach of their fiduciary duty.

21 89. After protest by shareholders about the January 2013 Transfer, the Gryphon
22 Board appointed a Special Committee of Kaiser and Goodhard to review the transaction.
23 Bockhold’s request that Tardif attend the call was ignored. Instead Kaiser selected Reid Godbolt
24 of Jones & Keller, an individual with no prior knowledge of the Borealis Mine or the January
25 2013 Transfer. On information and belief, the Special Committee review was a charade, solely
26 to placate shareholders and was not a reasonable review. *See, Exhibit 6 (email 10).*

27 90. Bockhold and Baughman followed up with Goodhard and Kaiser immediately
28 after the Special Committee meeting seeking clarification of the interest rates on the \$4 million

1 Default Loan. *See*, **Exhibit 6** (emails 6, 7, 8, 9). Kaiser had advised in early February that it
2 was “all spelled out in the [SEC] filings.” The documents filed with the SEC were lengthy,
3 extremely complex and intentionally confusing hence the need for clarification. Neither Kaiser
4 nor Goodhard replied to Bockhold, Baughman, Skinner or other shareholders repeated requests
5 for clarity and/or transparency.

6 91. On April 5, 2013, three months after the January 2013 Transfer was publicly
7 disclosed, Gryphon issued a press release clarifying the rates of interest:

8 [https://www.sec.gov/Archives/edgar/data/1262751/000106299313001719/exhibit99-](https://www.sec.gov/Archives/edgar/data/1262751/000106299313001719/exhibit99-1.htm)
9 [1.htm](https://www.sec.gov/Archives/edgar/data/1262751/000106299313001719/exhibit99-1.htm)

10 92. Noteworthy in the public disclosure is the statement “If the Company is unable
11 to satisfy any of the \$4.8 million advance plus accrued interest or subsequent advances and
12 interest, its interest in Borealis Mining Company LLC would be reduced by 25%”. Losing 25%
13 of an asset over six months is an effective interest rate of ~50% per annum. When combined
14 with the escalating monthly interest rate structure of 10%, 20%, 30% and 40% per annum over
15 the foreshortened six-month term there is an additional interest charge of ~36%. Therefore the
16 combined effective interest rate of the Default Loan was ~86%.

17 93. Tardif, a senior lawyer at Bordner Ladner Gervais and the co-author of the
18 default provisions in the Contribution Agreement should have been aware that an interest rate
19 of 86% is in breach of the *Canadian Criminal Code*. Once again, he owed a duty to Gryphon
20 to advise against entering such an agreement.

21 94. Tardif was also aware of the Restructuring Proposal which allowed Gryphon to
22 retain 100% of the Borealis property. *See*, **Exhibit 5**.

23 95. Following the closing for the January 2013 Transfer, Waterton took over
24 management of the operations of the Borealis Mine. Waterton caused BMC LLC to continue to
25 place low grade previously leached material on the leach pad knowing that the results would be
26 poor and that poor performance of the Borealis Mine would make it impossible for Gryphon to
27 meet its obligations under the Contribution Agreement.

28 96. On information and belief, the Gryphon Board did nothing to pressure BMC LLC
to pursue efforts to increase production to help Gryphon meet its obligations. During discovery

1 neither O’Neil, Kaiser nor Goodhard provided evidence demonstrating their attempt to fulfill their
2 fiduciary duty to Gryphon Gold.

3 97. In May 2013, O’Neil resigned as a director. Shortly thereafter he returned to
4 Jipangu International.

5 98. Bockhold demanded the opportunity to present Kaiser and Goodhard with a
6 Debtor-in-Possession (DIP) term sheet. Kaiser advised that Gryphon had engaged a new law firm.
7 Unlike Tardif at BLG, Faegre Baker Daniels LLP (“FBD”) had no prior involvement with
8 Gryphon, Borealis, Waterton or the January 2013 Transfer, nor did Kaiser or Goodhard provide
9 them any background information. At a meeting in Denver in May 2013 at the offices of FBD,
10 Dawson presented the Gryphon Board with a DIP term sheet. *See, Exhibit 6* (email 13). Neither
11 Kaiser nor Goodhard replied to the offer to provide DIP financing.

12 99. On June 24, 2013, Gryphon issued a press release announcing their voluntary
13 de-listing from the Toronto Stock Exchange thereby avoiding a requirement to provide audited
14 financial statements regarding the January 2013 Transfer.

15 100. Bockhold made repeated attempts to engage with Tardif seeking his assistance
16 and support. All of his requests were ignored. *See Exhibit 14*.

17 101. In the summer of 2013, under the direction of mine manager, Robert Cassenelli,
18 BMC LLC mined, crushed and leached fresh ore for approximately two months. Operational
19 reports received under subpoena show that gold production doubled. BMC LLC thereafter stopped
20 mining fresh ore and reverted to placing low grade previously leached material on the leach pad.
21 On information and belief, officers of BMC LLC and Waterton expressed anger when Borealis
22 Mine results improved. They discouraged improved revenue results.

23 102. This result suggests that if the CEO, COO and Gryphon Board had pursued a
24 strategy of operating a mine instead of a re-leaching operation, the Borealis Mine may have
25 produced more gold and silver and therefore Gryphon may have made money, thus avoiding the
26 need for the January 2013 Transfer or the follow-on dilution it assured.

27 103. By the end of July 2013, Gryphon was about to default under the Third
28 Amendment, the Contribution Agreement which would have resulted in it losing its remaining

1 34% membership equity in BMC, LLC to Waterton. To prevent this Gryphon shareholders filed
2 for appointment of a receiver to put Gryphon into bankruptcy *See, Exhibit 6* (email 14). This
3 action induced the Gryphon Board to file a voluntary petition for relief under Chapter 11 of the
4 United States Bankruptcy Code on July 29, 2013.

5 104. There is evidence suggesting that during the course of the Gryphon bankruptcy,
6 Waterton deliberately caused the operation of the Borealis Mine to underperform in order to
7 inhibit Gryphon from having a successful reorganization and “prove” Gryphon would never be
8 able to pay its debts. Before resigning, the remaining directors and officers failed to try to
9 protect the interests of the Gryphon shareholders.

10 105. A bankruptcy Trustee, Christina Lovato was appointed on December 13, 2013.

11 106. The Trustee conducted document discovery. The Trustee hired mining experts
12 to assess the Borealis Mine and Meridian Advantage was hired to provide a forensic review of
13 financial records.

14 107. The Trustee initially selected Knight Piesold as the consultant tasked with
15 conducting an operational and technical review of the Borealis Mine. Knight Piesold had
16 extensive prior knowledge of the property. *See Exhibit 15.*

17 108. Waterton delayed allowing Knight Piesold access to the property and
18 intentionally shortened their site visit not allowing them time to complete their due diligence.
19 Shortly thereafter the Trustees Special Counsel, Greg Wilson, requested Knight Piesold be
20 replaced with Independent Mining Consultants (“IMC”), a consulting firm with no prior
21 knowledge of the Borealis Mine. The Trustee filed the report at 9:26pm on November 20, 2014
22 immediately prior to the scheduled November 21, 2014 hearing at 10:00am. *See Exhibit 16.*
23 Michael Hester of IMC provided a report to the Trustee dated November 1, 2014. IMC
24 questioned the economics of the Borealis property and the Trustee reported that “at current gold
25 prices of about \$1200 per ounce, the Borealis Mine oxide leach project has no commercial
26 viability.” Upon information and belief, the IMC report significantly understated the value of
27 the property because it:

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- 1 • didn't use the price of gold at the time of the January 2013 Transfer (\$1590 per
2 ounce vs \$1200);
- 3 • Double counted capital expenditures. *See Exhibit 17*;
- 4 • Omitted including Run-of-Mine (non-crushed) ore in their analysis of the
5 projects cash flows; and
- 6 • Ascribed zero value to the NI 43-101 compliant 750,000 M&I ounce sulphide
7 gold deposit known as the Graben zone.

8 109. All errors were disclosed by Bockold-Dawson, but the Trustee took no action
9 on them.

10 110. During the bankruptcy, Dawson asserted to the Court that as a public company,
11 Gryphon shareholders had a right, and Gryphon Gold Corp. an obligation, to provide third party
12 validation of financial and operational results as a precursor to formulating a plan to emerge
13 from Chapter 11. PwC was selected for the forensic financial review and they engaged Micon
14 International Ltd. to conduct an operational review and valuation of the Borealis Mine.

15 111. Micon published a report dated July 14, 2015 which is held under court seal
16 because the report referred to documents that Waterton asserted were confidential. Their
17 findings are consistent with PwC and Meridian Advantage and found the mine to be more
18 valuable than identified for the January 2013 Transfer.

19 112. Although the Trustee received large volumes of documents in 2014, many key
20 Gryphon documents were never obtained. The Gryphon Board failed to ensure critical records
21 were preserved.

22 113. The Trustee provided commentary on this in their Status Report dated July 21,
23 2014. "On May 14, 2014, the Trustee took a limited scope Rule 2004 examination of Lisanna
24 Lewis regarding documents BMC LLC claimed had been destroyed or were otherwise
25 unavailable. Ms. Lewis was Debtor's Treasurer and Vice President and is currently a BMC LLC
26 employee. At her Rule 2004 examination, Ms. Lewis testified that most of Debtor's documents,
27 including emails, were stored on a Canadian-based computer server run by i-worx Enterprises
28 ("i-worx"). Ms. Lewis further testified that shortly before Debtor filed its July 29, 2013 Chapter

1 11 bankruptcy petition, the name on Debtor's i-worx account was changed to BMC LLC. Ms.
2 Lewis explained:

3 I believe, this is just my belief, but that it was known Gryphon was going
4 to claim bankruptcy and they wanted the name changed and -- **and the
5 Gryphon Gold e-mails to go away.** (Emphasis added).

6 According to Ms. Lewis, the decision to proceed with the name change was made by
7 BMC LLC. She further testified that she understood Debtor's records and emails on i-worx
8 would be lost if she did not act to create backup files. Ms. Lewis admitted she took no such
9 action to preserve Debtor's records and emails."

10 114. Ms. Lewis continues to be employed. Borealis LLC now owned 100% by
11 Waterton.

12 115. As an officer of Gryphon Gold, Ms. Lewis breached her fiduciary duty by not
13 ensuring the records were backed up. Gryphon was damaged as the loss of records harmed
14 Gryphon's efforts to protect itself, and helped cover-up the actions by the directors.

15 116. The director defendants, O'Neil, Kaiser and Goodhard were deposed in July
16 2015, in the course of the bankruptcy proceedings.

17 117. The claims herein are based on the documentary information and deposition
18 testimony disclosed in 2014 and 2015, in the discovery that occurred during the Gryphon
19 bankruptcy.

20 118. The following results were set forth in documents released by the Nevada
21 Department of Taxation and the Net Proceeds of Minerals Bulletin ("NPM Bulletin"):

<u>Fiscal Year</u>	<u>Revenue</u>	<u>Net Profit</u>	<u>Net Proceeds of Mine Tax Paid</u>
2011-12	\$ 931,794.00	0	0
2012-13	\$ 14,730,700.00	(\$2,340,268.00)	0
2013-14	\$ 106,500,649.00	\$72,686,944.00	\$ 3,634,347.20
2014-15	\$ 14,373,008.00	0	\$ 26,272.15
2015-16	\$ 9,966,925.80	\$ 2,236,445.80	\$ 107,294.00

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27 119. Based on earnings of US \$72,686,944.00 reported in 2013-2014, *see Exhibit 18*,
28 p. 15, and using valuation metrics at that time, the Borealis Mine would have an Enterprise

1 Value between \$1.23 and \$1.45 Billion. *See Exhibit 19.* This information is inconsistent with
2 the valuation in the Roth Fairness Opinion and Waterton’s testimony in Bankruptcy Court
3 where they vehemently argued the Borealis property is uneconomic.

4 120. During the bankruptcy, Bockhold Dawson made numerous requests, including
5 to the Trustee, to seek regulatory relief.

6 121. On information and belief, no action has been initiated by the SEC, Ontario
7 Securities Commission (“OSC”), or the BC Securities Commission (“BCSC”). Approximately
8 63% of the outstanding shares of Gryphon Gold are owned by US residents, 37% by Canadian
9 residents.

10 122. In the bankruptcy proceedings, Dawson requested leave to file an Adversary
11 Complaint alleging 9 counts of fraud. The US Trustee filed an adversary action on September
12 10, 2015.

13 123. On November 24, 2015, the Bankruptcy Court entered an Order denying
14 Dawson’s request to pursue claims in the bankruptcy proceeding against Waterton because the
15 proposed action did not provide recoveries to unsecured creditors sufficient to justify the
16 litigation. The Bankruptcy Court entered an order dismissing the Gryphon bankruptcy on
17 November 20, 2015.

18 124. Case No. CV13-02482 filed in the Second Judicial District – Washoe County,
19 Nevada, involves Klondex Gold (“Klondex”), a company once financed by Waterton. There
20 are numerous similarities between the Klondex/Waterton alleged relationship and the apparent
21 Gryphon/Waterton relationship including:

- 22 • As reported in a Klondex news release dated October 5, 2011, Cheryl Brandon,
23 portfolio manager at Waterton, stated, “We are pleased with the progress
24 Klondex has made to date at its Fire Creek project. We look forward to
25 continue working with management during the development of the
26 underground mine to facilitate the bulk sample and fund further ongoing
27 exploration drilling.”

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- CEO, Blane Wilson, commented, “We have an extremely active exploration and development program moving forward at Fire Creek. Five drill rigs are now executing our surface exploration program, and our underground decline is progressing well under the very capable teams from Small Mines Development. We are fortunate to have put in place the gold loan structure earlier this year as it is allowing Klondex to fund its operations without disruption.”
 - Alleged undisclosed prior relationships and/or collusion between company personnel and Waterton including concealment via an LLC structure to avoid disclosure to the board, regulators and investors, - *see Klondex Gold Case CV 13-02482 # 21, 27, 30, 37, 38, 40, 41, 55, 57, 60, 68, 69;*
 - Alleged breach of fiduciary duty *See # 29, 51;*
 - Alleged identical loan structure *See # 32, 35, 36, 71;*
 - Alleged falsified records, directed records to be falsified and/or sterilized corporate records *See # 50, 63, 64, 66;*
 - Alleged major shareholder launches an investigation, re-structures the Board and re-finances Waterton debt facility *See # 61, 62, 67. See Exhibit 20.*

18 125. On information and belief, Waterton, Wilson, Solloway, Carter and Magness
19 attempted to influence Klondex Mines to the detriment of the shareholders. Upon uncovering
20 the above noted evidence, on information and belief, the Klondex board fulfilled its fiduciary
21 duty to shareholders by removing the perpetrators and re-structuring their balance sheet.
22 Waterton’s debt facility was replaced through a financing led by GMP Securities.

23 126. On January 24, 2005 James T. O’Neil was promoted to Vice- President of
24 Finance at Apollo Gold following the resignation of Llee Chapman who tendered his
25 resignation “to pursue other business interests.” O’Neil announced the appointment of
26 Chapman as Gryphon Gold’s Chief Financial Officer April 2, 2012. Chapman resigned July
27 26, 2012, only 3 months later, when O’Neil was appointed joint CEO/CFO. On information
28 and belief, Chapman’s resignation coincided with the death of Gryphon Director, Donald W.

1 Gentry July 2, 2012. Gentry, a retired Professor Emeritus and Dean of Engineering at the
2 Colorado School of Mines joined the Gryphon Board in 2005 and was the only board member
3 with no affiliation of any kind with Waterton. This enabled O’Neil, Kaiser and Goodhard to
4 have operational and Board control of Gryphon Gold.

5 127. On information and belief, Waterton, O’Neil, Kaiser, Cryan, Goodhard, Lewis,
6 Chapman, Tschabrun, Wells and Tardif were involved in influencing the terms of the January
7 2013 Transfer to the detriment of the shareholders of Gryphon Gold.

8 128. David Russell resigned as President and CEO of Apollo Gold on June 25,
9 2010. Russell had worked at Apollo since 2002. An Apollo news release dated September 9,
10 2002 cites Chapman as the CFO. According to a Gryphon press release dated January 3, 2012,
11 O’Neil worked at Apollo “from 2004 to 2006.” Therefore, according to public press releases
12 Russell, O’Neil and Chapman all worked together at Apollo from 2004 to 2006. Russell and
13 Chapman also sat together on the Board of General Moly.

14 129. In a press release dated September 17, 2010, Russell was appointed as Lead
15 Director of Fire River Gold (“Fire River”), a public company listed on the TSX and based in
16 Vancouver, B. C.

17 130. Published records indicate that in April 2012 Waterton provided a \$12.75
18 million Gold Stream Credit Facility to Fire River Gold to replace a \$7.5 million facility with
19 Sprott Resources Lending Partnership. As reported in North of 60 Mining News August 25,
20 2013, Cheryl Brandon, portfolio manager at Waterton Global said, “We look forward to
21 working with Fire River Gold to provide the additional capital required for commissioning. In
22 addition, we have provided Fire River access to our in-house technical team to further expand
23 the Nixon Fork Gold mining operations in Alaska. The Waterton Global facility will allow
24 Fire River to carry out further underground development, commission the CIL circuit to
25 improve gold recoveries and execute their production growth strategy.”

26 131. On June 27, 2012 Fire River Gold issued a press release stating that Director
27 David Russell was appointed Interim President & CEO.

28 ///

1 132. In a press release reported in MINING.com dated July 19, 2012 Blane Wilson
2 was appointed President, CEO and a Director of Fire River Gold, three days after his
3 termination from Klondex Mines on July 16, 2012. *See Exhibit 22.* Russell stated, "The
4 Board takes great pleasure in Blane's appointment. With his background in mining, metal
5 processing and recovery, he is uniquely suited to his new role at Fire River and we look
6 forward to his valuable contribution to the Company's Nixon Fork mine."

7 133. In a press release dated October 2, 2012, Paul Dyer was appointed CFO of
8 Fire River and Russell tendered his resignation from the Board.

9 134. In a press release dated November 29, 2012 Fire River reported, "The
10 Company is pleased to announce that Richard Wells has been appointed to the Board of
11 Directors. Mr. Wells was awarded the Canadian Chartered Accountant designation in 2002
12 while working with PricewaterhouseCoopers. While at PwC, Richard worked in the audit
13 practice, and serviced audit clients ranging from small privately held manufacturing facilities
14 to large multinational public clients. Since 2005, Mr. Wells has been with Waterton Global
15 Resource Management." Wells was also appointed the General Manager of Borealis LLC at
16 the time of the January 2013 Transfer. He continues to be employed by Borealis LLC and he
17 provided testimony in support of Waterton's inaccurate and misleading claims during
18 bankruptcy. According to LinkedIn, Wells has been Chief Financial Officer at Waterton since
19 October 2010.

20 135. In August, 2013 Fire River defaulted on its loan to Waterton following the
21 decision to put the Nixon Fork mine in Alaska on care and maintenance in late June. *See*
22 **Exhibit 21.**

23 136. On July 7, 2014 Fire River ceded control of its 100% owned subsidiary,
24 Mystery Creek Resources, Inc. to Waterton, who thereby gained control of the Nixon Fork
25 Gold Mine. *See Exhibit 23.*

26 137. On February 9, 2016 Fire River announced the resignation of Blane Wilson,
27 Paul Dyer and Brent Chamberlain. *See Exhibit 24.*

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1 138. The Secretary of State for Nevada reports Paul Dyer as Treasurer/Secretary and
2 Blane Wilson, President and Director of Mystery Creek Resources, Inc. *See Exhibit 25.*

3 139. On August 24, 2016 Mystery Creek Resources applied to the State of Alaska
4 Division of Mining Lands & Water to re-open the Nixon Fork Gold Mine. *See Exhibit 26.*

5 140. On information and belief, Waterton, Russell, Wilson, Dyer and Wells
6 influenced the foreclosure of the Nixon Fork Gold Mine to the detriment of the shareholders
7 of Fire River Gold.

8 141. On August 26, 2011 Royal Standard Minerals Inc. (“RSM”) amended its
9 existing Senior Secured Bridge Loan with Waterton Global Value into an US \$8,000,000
10 Senior Secured Gold Stream Debt Facility. Cheryl Brandon, Portfolio Manager at Waterton,
11 stated, “We look forward to continue working with Royal Standard to provide the required
12 capital to commission the Goldwedge Mine. In addition, we are pleased to have the
13 opportunity to finance future exploration and development programs for the Company’s
14 prospective portfolio of Nevada based assets.”

15 142. On November 17, 2011 Philip Gross was appointed to RSM’s board. He
16 became CEO December 7, 2011.

17 143. On January 11, 2012, shortly after Gross became CEO, RSM announced the
18 appointment of Riyaz Lalani, John Fitzgerald and Ken Strobbe to the RSM board. Public
19 records indicate that at the time Lalani was COO of Kingsdale Shareholder Services.

20 144. In a press release dated May 8, 2012 announcing a loan extension with
21 Waterton Gross stated, "We appreciate the ongoing support of Waterton. This
22 loan extension will provide the resources we need to continue on our path of growth, and
23 further secure the Company's determination to join the ranks of Nevada gold producers in
24 the coming months." On information and belief, Philip Gross had an undisclosed relationship
25 with Waterton. On May 10, 2012 Gross and Cheryl Brandon were appointed to the Board of
26 IGE Resources a company claiming to have “a strong cornerstone investor in Waterton Global
27 Value.”

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1 145. According to Bloomberg, Lalani served as an Analyst Manager at Aqua
2 Wellington Asset Management LLC. Isser Elishis, the CIO of Waterton is the former CIO of
3 Aqua Wellington. On information and belief, Lalani worked for Elishis at Aqua Wellington.

4 146. According to relationships.com, Lalani has relationships with Ken
5 Stobbe, Manager, Mine Engineering at Waterton Global Resource Management Inc. The
6 website also cites John Fitzgerald has relationships with Lalani and Stobbe.

7 147. On July 19, 2012, RSM announced the appointment of “[a] special committee
8 (‘Special Committee’), consisting of directors independent of management, to oversee a
9 strategic review process. The Special Committee has engaged BayFront Capital Partners Ltd.
10 as its financial advisor to assist in this process.” SEDAR has no record of the members of the
11 Special Committee.

12 148. According to public records, on July 27, 2012 Riyaz Lalani tendered his
13 resignation to the RSM Board “due to other personal and professional commitments.” Lalani
14 is currently listed as the media contact at Waterton Global Resource Managements website.

15 149. On October 10, 2012 RSM issued a press release announcing an Asset
16 Purchase and Sale Agreement with Scorpio. The release also advised that Fitzgerald had
17 tendered his resignation from the RSM board of directors effective October 4, 2012, only 9
18 months after his appointment.

19 150. On October 11, 2012 Scorpio Gold announced the acquisition of the
20 Goldwedge and Pinon properties from Royal Standard Minerals Inc. “Scorpio Gold is
21 acquiring the properties through a sale process organized by a strategic committee of the
22 Board of Directors of Royal Standard and Royal Standard’s independent financial advisors.”

23 151. Noteworthy excerpts from the Notice of Special Meeting of Shareholders -
24 Management Information Circular include:

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26 ///

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1 Reasons for the Sale/ Transaction:

- 2 • The Corporation incurred significant amounts of debt in developing its
- 3 flagship Goldwedge Property. On April 17, 2012 the Corporation announced
- 4 the commissioning of its mill at the Goldwedge property. As the mill began
- 5 operations, initial results were disappointing and revenues were not sufficient
- 6 to service existing debt. The Corporation negotiated a \$2 million loan
- 7 extension from Waterton in May, 2012 and negotiated an additional \$2
- 8 million loan extension from Waterton in June, 2012, but continued
- 9 disappointing production results resulted in the Corporation being unable to
- 10 service certain debt obligations as they became due;

11 Regarding the Fairness Opinion provided by BayFront:

- 12 • This Opinion has been prepared in accordance with the Disclosure Standards
- 13 for Formal Valuations and Fairness Opinions of the Investment Industry
- 14 Regulatory Organization of Canada (“IIROC”) but IIROC has not been
- 15 involved in the preparation or review of this fairness opinion;
- 16 • BayFront has not been engaged to prepare, and has not prepared, a valuation
- 17 or appraisal of Royal Standard or Scorpio, or any of their respective assets,
- 18 securities or liabilities (whether on a stand-alone basis or as a combined
- 19 entity), and the Opinion should not be construed as such;
- 20 • BayFront performed a comparison of the Exchange Ratio (as between Royal
- 21 Standard and Scorpio) to the various financial, operational, trading and
- 22 technical measures on a relative basis based on Management Analysis;
- 23 • BayFront has not conducted any independent investigations to verify the
- 24 accuracy and completeness thereof.

25 152. On information and belief, Waterton, Gross, Lalani, Fitzgerald and Strobbe

26 influenced the terms of the Goldwedge and Pinon property sale to the detriment of the

27 shareholders of Royal Standard Minerals.

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1 153. According to an article in Forbes magazine dated March 4, 2002 entitled *Toxic*
2 *Stocks*, Isser Elishis, the Chief Investment Officer of Aqua Wellington is quoted as saying,
3 “We created the market for [equity lines],” commonly referred to as “death spiral loans”. *See*,
4 **Exhibit 27**. Also, *see*, **Exhibit 28**, an article from Bloomberg.com. Isser Elishis is the founder
5 and CIO of Waterton Global Resources Management, the parent company of Waterton Global
6 Value.

7 154. Waterton has raised \$US1.925 Billion from sovereign wealth funds, public and
8 private investors in three tranches:

9 (a) US \$200 million Waterton Precious Metals Fund I in 2010:
10 [http://www.palico.com/funds/waterton-precious-metals-fund-i-](http://www.palico.com/funds/waterton-precious-metals-fund-i-cayman-lp/5c2d8cddb87746ecb4432afb1e14aa54)
11 [cayman-lp/5c2d8cddb87746ecb4432afb1e14aa54](http://www.palico.com/funds/waterton-precious-metals-fund-i-cayman-lp/5c2d8cddb87746ecb4432afb1e14aa54);

12 (b) US \$1 Billion Waterton Precious metals Fund II in 2014 (*Globe &*
13 *Mail*) and US \$725 in 2016:
14 [http://business.financialpost.com/news/mining/waterton-global-](http://business.financialpost.com/news/mining/waterton-global-resource-management-raises-another-us725-million-for-mining-private-equity-deals)
15 [resource-management-raises-another-us725-million-for-mining-](http://business.financialpost.com/news/mining/waterton-global-resource-management-raises-another-us725-million-for-mining-private-equity-deals)
16 [private-equity-deals.](http://business.financialpost.com/news/mining/waterton-global-resource-management-raises-another-us725-million-for-mining-private-equity-deals)

17 Exclusive selling agents were Hamilton Lane and Atlantic-Pacific Capital.

18 155. Public investors include:

19 (a) Silver State Opportunity Fund:
20 [http://www.nevadatreasurer.gov/uploadedFiles/nevadatreasurer.gov/co](http://www.nevadatreasurer.gov/uploadedFiles/nevadatreasurer.gov/content/NCIC/Meetings/2013/2013-11-05_Minutes_NCIC.pdf)
21 [ntent/NCIC/Meetings/2013/2013-11-05_Minutes_NCIC.pdf](http://www.nevadatreasurer.gov/uploadedFiles/nevadatreasurer.gov/content/NCIC/Meetings/2013/2013-11-05_Minutes_NCIC.pdf);

22 (b) Hawaii Employees’ Retirement System and the Louisiana Teachers’
23 Retirement System:
24 [http://m.pionline.com/article/20140407/ONLINE/140409905/waterto](http://m.pionline.com/article/20140407/ONLINE/140409905/waterton-global-resource-management-closes-2nd-commodities-fund)
25 [n-global-resource-management-closes-2nd-commodities-fund](http://m.pionline.com/article/20140407/ONLINE/140409905/waterton-global-resource-management-closes-2nd-commodities-fund);

26 (c) University of Michigan:
27 [http://www.bloomberg.com/news/articles/2016-05-16/university-of-](http://www.bloomberg.com/news/articles/2016-05-16/university-of-michigan-to-invest-in-gold-copper-mining-fund)
28 [michigan-to-invest-in-gold-copper-mining-fund.](http://www.bloomberg.com/news/articles/2016-05-16/university-of-michigan-to-invest-in-gold-copper-mining-fund)

1 156. During a site visit conducted by the Trustee’s Special Counsel, Greg Wilson
2 (left) and Isser Elishis (right) on August 13, 2014 there was evidence of carbon fines in the
3 pregnant pond. *See Exhibit 29*. Industry “Best Practice” specifically avoids allowing carbon
4 to enter the pregnant pond and the Borealis Mine was designed as a closed circuit system that
5 adhered to industry practice. The only time pregnant solution should come in contact with
6 carbon is in the carbon columns. Residual carbon fines are processed in a carbon press and

1 sent to an offsite refractory for gold recovery. Carbon fines re-directed to the pregnant pond
2 would reduce recordable gold recoveries from the carbon columns.

3 157. On information and belief, Waterton must have had previous knowledge of the
4 impact and financial value of residual carbon in a pregnant/barren pond through their
5 involvement with Scorpio Golds Mineral Ridge mine, *See* [http://m.marketwired.com/press-](http://m.marketwired.com/press-release/scorpio-golds-rehab-mineral-ridge-pregnant-barren-pond-facility-reveals-high-grade-gold-tsx-venture-sgn-1287178.htm)
6 [release/scorpio-golds-rehab-mineral-ridge-pregnant-barren-pond-facility-reveals-high-grade-](http://m.marketwired.com/press-release/scorpio-golds-rehab-mineral-ridge-pregnant-barren-pond-facility-reveals-high-grade-gold-tsx-venture-sgn-1287178.htm)
7 [gold-tsx-venture-sgn-1287178.htm](http://m.marketwired.com/press-release/scorpio-golds-rehab-mineral-ridge-pregnant-barren-pond-facility-reveals-high-grade-gold-tsx-venture-sgn-1287178.htm) and **Exhibit 30**.

8 158. Waterton continued to expand production capabilities at BMC LLC during
9 bankruptcy. A new heap leach pad and overflow pond were funded and constructed. Google
10 Earth images in September 2013 and February 2014 depict the site following the January
11 2013 Transfer and during bankruptcy proceedings. *See* **Exhibit 31**. On July 15, 2016 Steve
12 Craig, former VP of Exploration at Gryphon Gold, conducted a flyover of the Borealis
13 property. Photographs confirm the new pad and pond were constructed and ready for use. *See*
14 **Exhibit 32**. Waterton put the Borealis Mine on care and maintenance in the fall of 2015
15 alleging it was uneconomic due to uncrushable ore and poor recoveries. This contributed to
16 the dismissal of the adversary action and ultimately the dismissal of Gryphon's bankruptcy in
17 the Bankruptcy Court.

18 159. Borealis Mining Company, LLC recently applied for, and received approval to
19 re-open the Borealis Mine. "Long term plans indicate the Permittee will return to active
20 surface mining with the expansion of five previously mined pits: Freedom Flats, Borealis,
21 East Ridge/Goldview, Northeast Ridge, and Polaris (formerly referred to as Deep Ore Flats)."
22 *See* **Exhibit 33**. Collectively these zones total 5,144,000 tons of ore which, in previous
23 testimony in Bankruptcy Court, Waterton claimed were uneconomic because the ore could not
24 be crushed. The price of gold today (US\$1254) is not materially different than the price
25 during bankruptcy proceedings (US\$1150 - \$1350).

26 160. As a result of the dismissal of the Gryphon bankruptcy, the public shareholders of
27 Gryphon lost all value of their shareholding in Gryphon because:

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- 1 (a) Gryphon was subjected to loans with rates of interest of 1057%, 279%,
2 77% and ~86%;
- 3 (b) Waterton's proof of claim in the Bankruptcy Court included the above-
4 noted interest rates and the \$4.0 million Default Loan, which was in
5 default when signed, was likely double-counted and which was not
6 proven to have been provided to Borealis on Gryphons behalf;
- 7 (c) Waterton successfully refused to provide documents relating to
8 negotiation of the January 2013 Transfer;
- 9 (d) The Gryphon Board and officers failed to insist on independent
10 valuations for the January 2013 Transfer, which was damaging to
11 Gryphon in light of the evidence adduced during the bankruptcy
12 proceedings that Gryphon's value greatly exceeded the value upon which
13 the transfer was based; and
- 14 (e) Waterton was the only secured creditor, the rights of unsecured creditors
15 and shareholders were lost despite having legitimate claims.

16 161. During argument which resulted in the order dismissing the Dawson complaint,
17 the Court suggested that given the alleged breach of the *Canadian Criminal Code* Gryphon
18 shareholders should seek relief in Canada. The Ontario Securities Commission did not reply to
19 shareholder requests seeking their assistance. *See Exhibit 34.*

20 162. Gryphon shareholders also reached out to the BC Securities Commission and to
21 the Minister of Finance, the Honorable William Francis Morneau. The BCSC re-affirmed their
22 position that enforcement was outside their jurisdiction. There was no reply from the Honorable
23 Ministers office. *See Exhibit 3.*

24 163. Pursuant to the Bankruptcy Court's recommendation, in a letter dated January 15,
25 2016, the Investment Industry Regulatory Organization of Canada ("IIROC"), *see Exhibit 3*,
26 requested a copy of the Initial Report submitted by PricewaterhouseCoopers and held under court
27 seal. At a hearing March 1, 2016 Waterton argued it was defamatory. The Bankruptcy Court denied
28 IIROC's request, choosing instead to release the report with redactions. *See Exhibit 35.*

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III.
FIRST CLAIM FOR RELIEF
(Breach of Fiduciary Duty)

164. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1
through 163, above, and incorporates the same herein as if set forth in their entirety.

1 165. Director defendants and officer defendants breached their fiduciary duty owed to
2 Gryphon as described herein. The breaches include, in addition to those other breaches set forth
3 herein:

- 4 (a) Failing to seek appropriate financing for successful operation of the
5 Borealis Mine;
- 6 (b) Failing to operate the Borealis Mine using fresh ore which would have
7 maximized its economic potential;
- 8 (c) Colluding with Waterton to implement Waterton's priorities, not
9 Gryphon's priorities;
- 10 (d) Agreeing to financings at usurious rates in breach of the *Canadian
11 Criminal Code*;
- 12 (e) Intentionally rejecting possible alternatives to Waterton financing
- 13 (f) When borrowing money, failing to adequately finance needed mining
14 equipment and when some was purchased, intentionally buying oversized
15 equipment that was too expensive;
- 16 (g) Failing to follow-up on the Waterton Restructuring and instead delaying
17 until the Waterton transfer was negotiated;
- 18 (h) Allowing Waterton to dictate all terms of the Waterton Transfer, which
19 ensured that Gryphon would lose its primary asset within 6 months;
- 20 (i) Agreeing to the Waterton Transfer that transferred Gryphon's interest in
21 Borealis Mine for far less than actual value;
- 22 (j) Intentionally ignoring repeated attempts by Bockhold/Dawson and
23 Richardson GMP, to provide alternative sources of financing including a
24 DIP Term Sheet, that would have preserved shareholder value;
- 25 (k) Failing to preserve complete records of events, particularly those occurring
26 between November 2012, and the end of January 2013, that would have
27 documented the process leading to the Waterton Transfer;
- 28 (l) Intentionally engaging in a charade of Special Committee review of the
Waterton Transfer and the DIP Term Sheet;
- (m) Intentionally structuring the January 2013 Transfer to avoid a shareholder
vote;
- (n) Intentionally issuing untimely and/or false and misleading press releases in
breach of SEC and OSC regulatory policy; and

1 (o) At critical times, failing to exercise reasonable or prudent business judgment
2 and acting in the best interest of Gryphon and its shareholders.

3 166. The breach of fiduciary duties as described herein were the result of the intentional
4 misconduct of defendants.

5 167. If the director defendants would have obtained non-predatory financing that was
6 available to them and ensured that Borealis was operated as a mine not a re-leaching operation
7 Gryphon would have survived. Instead, Gryphon lost everything.

8 168. Gryphon Gold has been damaged by the loss of its entire interest in the Borealis
9 Mine, which damage is a minimum of \$50 million dollars and perhaps hundreds of millions of
10 dollars.

11 WHEREFORE, the Plaintiff requests judgment as set forth below.

12 1. For judgment in favor of Plaintiff and against director defendants and defendant
13 officers, jointly and severally, for breach of fiduciary duty as alleged herein;

14 2. For damages proven at trial in an amount in excess of \$10,000;

15 3. For punitive damages;


16 4. For an award of prejudgment interest, post-judgment interest, attorney's fees and
17 costs, as allowed by law; and

18 5. For such other and further relief as the Court deems just and proper under the
19 circumstances.

20 **AFFIRMATION**
21 **Pursuant to NRS 239B.030**

22 The undersigned does hereby affirm that the preceding document does not contain the
23 social security number of any person.

24 DATED this 3 day of March, 2017.

25 WOODBURN AND WEDGE
26 By: 
27 W. Chris Wicker, Esq.
28 Nevada Bar No. 1037
Attorneys for G. R. Dawson Holdings

1 VERIFICATION

2 I, IAN DAWSON, as Director of G.R. Dawson Holdings, Ltd, derivative claimant for
3 GRYPHON GOLD CORPORATION, hereby swear under penalty of perjury that the
4 assertions in this Verification are true.
5

6 I declare that I am the Director of G.R. Dawson Holdings, Ltd, derivative claimant for
7 GRYPHON GOLD CORPORATION, Plaintiff, in the foregoing action, that have read the
8 foregoing Verified Complaint, and know the contents thereof, that the same is true of my own
9 knowledge, save and except as to the matters therein stated on information and belief, and that
10 as to such matters, I believe them to be true.
11

12 DATED this 3rd day of March, 2017.

13 G.R. DAWSON HOLDINGS LTD.

14 By: 

15 Ian Dawson
16 Director
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