

1 **\$1425**
2 W. CHRIS WICKER, ESQ.
3 Nevada Bar No. 1037
4 SETH J. ADAMS, ESQ.
5 Nevada Bar No. 11034
6 WOODBURN AND WEDGE
7 6100 Neil Road, Ste. 500
8 Reno, Nevada 89505
9 Telephone: (775) 688-3000
10 Facsimile: (775) 688-3088
11 cwicker@woodburnandwedge.com
12 sadams@woodburnandwedge.com

13 Attorneys for Gryphon Gold Corporation

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

15 IN AND FOR THE COUNTY OF WASHOE

16 GRYPHON GOLD CORPORATION, a
17 Nevada Corporation

Case No.:

18 Plaintiff,

Dept. No.:

19 vs.

20 WATERTON GLOBAL RESOURCE
21 MANAGEMENT, INC., a Canadian
22 company based in Toronto, Ontario;
23 WATERTON GLOBAL VALUE, L.P., a
24 limited partnership formed under the laws of
25 the British Virgin Islands; WATERTON
26 NEVADA SPLITTER, LLC, a Nevada
27 Limited liability company, and BOREALIS
28 MINING COMPANY, LLC, a Nevada
Limited liability company, and DOES 1-10,

COMPLAINT

Defendants.

24 Plaintiff, GRYPHON GOLD CORPORATION (“Gryphon”), by way of its court-
25 appointed custodian, MURRAY BOCKHOLD, and by and through Gryphon’s counsel of
26 record, WOODBURN AND WEDGE, complains against Defendants, WATERTON GLOBAL
27 RESOURCE MANAGEMENT, INC., WATERTON GLOBAL VALUE, L.P., and
28

1 WATERTON NEVADA SPLITTER, LLC (collectively referred to herein as “Waterton”), and
2 BOREALIS MINING COMPANY, LLC (“Borealis” and collectively referred to herein with
3 Waterton as “Defendants”); and alleges as follows:

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

5 1. Gryphon is a Nevada corporation which formerly conducted operations, through
6 a former wholly-owned subsidiary known as Borealis Mining Company, at a gold and silver
7 open-pit heap leach mine located near Hawthorne, Nevada commonly known as the Borealis
8 Mine.

9 2. The headquarters and/or principal office of Gryphon has been located in
10 Vancouver, B. C. Canada, in Washoe County and in Mineral County, Nevada.

11 3. Gryphon no longer has any officers, directors, or employees. Gryphon’s primary
12 asset was the Borealis Mine, which has been lost as alleged herein.

13 4. On July 19, 2018, Murray Bockhold (“Bockhold”) was appointed as custodian
14 for Gryphon in an order issued by the Second Judicial District Court in Case No. CV18-01442,
15 which confers, amongst other things, the power to instigate legal process on behalf of Gryphon.
16 Bockhold provides investment advice to Bockhold Investment Management Group at CIBC
17 Wood Gundy, Park Place.

18 5. Defendant Waterton Global Resource Management, Inc. is a Canadian company
19 headquartered in Toronto, Ontario.

20 6. Defendant Waterton Global Value, L.P. is limited partnership formed under the
21 laws of the British Virgin Islands and is managed by Waterton Global Resource Management,
22 Inc.

23 7. Defendant Waterton Nevada Splitter, LLC is a Nevada limited liability company
24 whose sole Manager is Isser Elishis, whom is the Managing Partner and CIO of Waterton Global
25 Resource Management.

26 8. Defendant Borealis Mining Company, LLC is a Nevada limited liability
27 company which currently operates the Borealis Mine. Borealis Mining Company, LLC is
28

1 presently managed by Elko Mining Group, LLC whose sole Manager is Richard J. Wells, the
2 present CFO at Waterton Global Resource Management.

3 9. DOES 1-5 were responsible as coconspirators and actors for the wrongful acts
4 alleged herein and this complaint will be amended when these Doe defendants are identified.
5 DOE defendant 1 is believed to be an officer or director of Borealis whom was complicit in the
6 actions complained of below. Doe defendant 2 is believed to be an officer or director of
7 Waterton whom was complicit in the actions complained of below. Doe defendants 3-10 are
8 believed to be other actors and entities which are responsible, in whole or in part, for the actions
9 complained of below.

10 10. All of the named defendants (the three Waterton entities and Borealis) have
11 conducted business in Nevada and were directly involved in the actions complained of below.

12 11. On or about July 29, 2013, and induced by a shareholder action to appoint a
13 receiver, Gryphon filed for bankruptcy protection (hereafter referred to as the “Bankruptcy”).
14 Its largest creditor, Waterton was in the process of foreclosing their loans against Gryphon’s
15 primary asset, the Borealis Mine, requiring Gryphon to seek bankruptcy protection.

16 12. During the course of the bankruptcy, Gryphon shareholders Bockhold and G.R.
17 Dawson Holdings, Ltd. (“Bockhold/Dawson”), derivatively on behalf of the bankruptcy
18 Trustee, were able to obtain copies of documents during discovery in 2014, and take the
19 depositions of three of the director defendants in 2015 with the most illuminating being that of
20 James T. O’Neil, Jr. (“O’Neil”).

21 13. Information evidencing these actions first became available in July of 2015 and
22 with the recently discovered activities at the Pond, discussed in detail below, was Plaintiff
23 compelled to take appropriate action. Waterton obtained control of the Pond and began its
24 diversion of the gold-laden Carbon at this time, or shortly thereafter, as well.

25 II. GENERAL ALLEGATIONS

26 A. Relevant History of Gryphon Gold:

27 14. This case centers on a gold and silver open-pit heap leach mine located near
28 Hawthorne, Nevada, known as the Borealis Mine. In the 1980s the Borealis Mine was operated

1 by Echo Bay Mines and it crushed, leached and produced approximately 600,000 oz. of gold.
2 For the purpose of showing a pattern and transparency, this complaint also includes a
3 chronology of the public record for three other TSX listed companies – Klondex Mines (symbol:
4 KDX), Fire River Gold (symbol: FAU) and Royal Standard Minerals (symbol: RSM).

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

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

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

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

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

27 ///

28 ///

1 **B. Waterton's Toxic Loan for Equity Arrangement:**

2 20. The public record and published reports show that since their arrival in Canada
3 in 2009, Waterton has provided debt financing to 16 public companies. They have working
4 relationships with a vast network of people. It appears that their business model demonstrates a
5 pattern that 'places' and sequentially adds more Waterton 'friendlies' to a management team
6 and/or a Board who encourage, facilitate and/or dictate using Waterton as a sole source of debt
7 capital all of which is intentionally undisclosed to the 'target' company. Again, it appears that
8 there is a direct correlation between the movement of people within their network, the
9 companies they provide loans to, the structure of their debt financings, the alleged use of
10 misinformation, the over-loaning and subsequent trigger event that 'causes' default culminating
11 in a claim on their security thereby wiping out shareholder-equity and resulting in a total loss
12 to public shareholders. As of July, 2018, losses to public shareholders of victim companies total
13 in excess of US\$650 million (C\$845 million) which includes the total estimate value of
14 Gryphon.

15 21. In early 2012, Gryphon was in need of financing to fund the operation of the
16 Borealis Mine. O'Neil was assigned the task of locating financing for Gryphon. O'Neil introduced
17 Waterton to Gryphon's Board as a possible source of financing. Gryphon was also engaged in
18 discussions with Aurament, but mysteriously decided to go with Waterton instead even though the
19 Board Members agreed that Auramet's offer was much more advantageous than Waterton's.

20 22. In early 2012, O'Neil began negotiations with Waterton for a credit facility for
21 Gryphon in the range of \$15 million.

22 23. Gryphon needed financing before it and Waterton could finalize the \$15 million
23 credit facility. On March 20, 2012, Gryphon obtained a bridge loan facility (\$1.5 million) from
24 Waterton (the "Bridge Loan") which included the following terms:

- 25 (a) interest was charged at the rate of 15% per annum;
- 26 (b) Gryphon paid a \$30,000 structuring fee;
- 27 (c) Gryphon paid \$100,000 in legal and other fees; and

28

1 (d) Gryphon issued 1,500,000 Series R Warrants to Waterton which,
2 according to Gryphon's December 31, 2012 10-Q, were estimated to be
3 worth \$137,291.

4 Based on an opinion of counsel, the rate of interest was so high that it breached Sec. 347 of the
5 *Criminal Code of Canada*.

6 24. On April 18, 2012, Gryphon entered into a \$15 million Senior Secured Gold
7 Stream Credit Agreement with Waterton (the "Credit Facility"). The Credit Facility was to be
8 used to: (a) pre-pay \$7.5 million in existing secured debentures maturing July 28 and November
9 23, 2012; (b) repay the Bridge Loan; and (c) provide \$4.5 million in working capital and for
10 loan costs. The terms of the Credit Facility included:

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

21 25. On April 18, 2012, Gryphon also executed a Gold and Silver Supply Agreement
22 (the "Supply Agreement") giving Waterton the right (but not the obligation) to purchase all of
23 the Borealis Mine's production until it ceased operation. The Supply Agreement further gave
24 Waterton a 1% discount on all purchases for as long as the loan was outstanding plus three
25 years, or after the sale of 150,000 ounces of gold, whichever was later.

26 26. On information and belief, the amount of the Credit Facility was determined
27 either by O'Neil or Waterton but it was short of Gryphon's alleged needs. According to O'Neil,
28 Borealis Mining Company was in desperate need of appropriate and properly sized mining

1 equipment, such as larger trucks and loaders. Yet, Gryphon owned two Volvo articulated dump
2 trucks that were perfectly capable of hauling ore, albeit they were undersized. The Credit
3 Facility did not provide funds for the equipment that O’Neil claimed was essential to the mining
4 operations, yet it did enable Gryphon to prepay existing debt in advance of its maturity and
5 enable Waterton to prioritize its security claim by removing all other lenders. The directors
6 must have known that there was no need for new mining equipment and that they agreed to
7 accept new capital with an effective minimum cost of 23.5% per annum to prepay existing
8 capital costing 10%.

9 27. During 2012, Borealis Mining Company simply pushed previously leached and
10 processed material onto a crusher and loaded the heap leach pad with the use of conveyors.
11 Borealis Mining Company leached the pads to extract gold and silver. Throughout the entire
12 time Jim O’Neil and the Board were responsible for operations at Gryphon Gold, Borealis
13 Mining Company only processed previously leached material with a grade that was roughly
14 1/10th that of the fresh ore available on the property. Although they were undersized, Gryphon
15 did own and have access to two Volvo articulated dump trucks capable of hauling fresh ore.

16 28. In the summer of 2012, according to O’Neil, Gryphon needed more funds and,
17 once again, on information and belief, O’Neil suggested Waterton as the source for additional
18 funds and the other directors did not question this.

19 29. On September 24, 2012, the Credit Facility was amended to increase the total
20 principal amount from \$15 million to \$20 million (the “First Amendment”). In a press release,
21 Cheryl Brandon, Portfolio Manager at Waterton, stated, “We are pleased with the progress
22 Gryphon Gold has made at its flagship Borealis Project. As a result of the expansion of the heap
23 leach pad and construction of the ADR processing facility, the company is well positioned to
24 continue to increase production and benefit from lofty gold prices. We have established a good
25 working relationship with management and look forward to continuing to support Gryphon on
26 future expansion opportunities.” James T. O’Neil Jr., Chief Executive Officer and Interim CFO
27 of Gryphon Gold Corporation, stated, “We believe that the additional financing and amended
28 repayment schedule provide us with substantial financial flexibility to fund our investment in

1 expanding our production capacity without impeding our working capital that is generated
2 through gold sales. The additional financing will support the bonding requirement of our
3 incremental fluid flow, as well as the purchase of an additional carbon stack and pumps. We
4 continue to make progress at the Borealis project. We are pouring gold weekly and we continue
5 to work on the expansion of the heap leach pad.”

6 Under the First Amendment:

- 7 (a) the term of loan was extended to November 31, 2014, for a total of 31
8 months;
- 9 (b) The structuring fee on each additional Advance was increased to 2%
10 (which only applied to the additional \$5 million advanced);
- 11 (c) Gryphon paid total “amended debt offering costs” of \$705,649; and
- 12 (d) The Supply Agreement was amended to allow Waterton to purchase all
13 of the Borealis Mine’s production at a 3% discount to current market
14 prices.

15 30. After the First Amendment was finalized, O’Neil made arrangements to lease
16 larger, properly-sized equipment leaving the Volvo trucks to sit idle on the property and making
17 no attempt to sell them. Then, to the surprise of other members of Gryphon’s Board, O’Neil
18 testified that he cancelled the orders for the new, leased equipment and entered into a transaction
19 to purchase much larger Caterpillar trucks and loaders. The Caterpillar equipment was costlier
20 than the equipment originally ordered and was much larger than was necessary for the
21 operations at the Borealis Mine. O’Neil advised the other Board members that he had obtained
22 Waterton’s “consent” for the purchase of the oversized equipment. The other Board members
23 took no action to change the order in spite of the fact that it made no sense to borrow additional
24 funds to purchase oversized equipment when i) they already had adequate equipment that was
25 on-site and fully paid for, and ii) they weren’t using the equipment to load and process fresh
26 ore. These actions are consistent with a so-called “death spiral loan” business model whereby
27 the lender intentionally over-loans to create distress prior to the inevitable enforcement of their
28 security interest.

///

1 31. The discovery disclosed that the CEO, O’Neil, and COO, Donald B. Tschabrun
2 (“Tschabrun”), failed to implement a plan to mine fresh ore, which could have increased
3 revenues.

4 32. O’Neil, Gryphon’s Board and Waterton knew the proceeds of the Credit Facility
5 and the First Amendment were insufficient to fund the Caterpillar equipment purchase and that
6 the Volvo trucks were sitting idle.

7 33. Due to its efforts in placing insiders on Gryphon’s Board, Waterton received
8 confidential information and knew Gryphon was considering a \$5 million private placement to
9 meet Borealis Mining Company’s operational needs in the fall of 2012. On or about October
10 22, 2012, Waterton submitted a document entitled “Gryphon Gold Restructuring Proposal” (the
11 “Restructuring Proposal”) to O’Neil for presentation to Gryphon’s Board.

12 34. On information and belief, Waterton’s purpose in proposing the Restructuring
13 Proposal was to convince Gryphon’s Board that a conversion of Waterton’s debt for equity in
14 a new joint venture with Gryphon would be more beneficial to Gryphon and its shareholders
15 than a \$5 million private placement, and to convince the Gryphon board to abandon the \$5
16 million private placement.

17 35. Pursuant to the Restructuring Proposal, Waterton proposed to convert 100% of
18 its existing debt to a 60% interest in a newly formed joint venture. Gryphon would receive a
19 40% interest in the new joint venture. According to the Restructuring Proposal, Waterton’s
20 60% interest would be based on existing \$25 million debt to current "enterprise value" of
21 Gryphon. Based upon this exchange ratio, Waterton set Gryphon’s enterprise value at
22 approximately \$41.7 million.

23 36. From commencement of operations at the Borealis Mine, gold recoveries were
24 lower than expected due to only processing previously leached reserves. In the Restructuring
25 Proposal, Waterton’s projections of future performance downgraded some of Gryphon’s ore
26 reserves to reflect the actual results of operations. In other words, Gryphon’s \$41.7 million
27 enterprise value was based upon the downgraded gold content of ore.

28 ///

1 37. The Restructuring Proposal also forecast that Gryphon’s 40% interest in the new
2 joint venture would generate cash flow for Gryphon of about \$4.6 million in 2013 and another
3 \$12.2 million in 2014.

4 38. Waterton’s cash flow projections in the Restructuring Proposal were based upon
5 a gold price of \$1,400 per ounce. When the Restructuring Proposal was submitted to Gryphon,
6 the price of gold was over \$1,600 per ounce. At \$1,600 gold, the cash flow projections would
7 have been higher than suggested by Waterton and the enterprise value of Gryphon would also
8 have been higher than the indicated \$41.7 million.

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

15 40. After the Restructuring Proposal was presented by Waterton, the Gryphon Board
16 did not proceed with the \$5 million private placement. During this entire process, Murray
17 Bockhold, an Investment Advisor at Richardson GMP, was on record with both James O’Neil
18 (joint CEO/CFO) and Marvin Kaiser (Chairman of the Board hereafter “Kaiser”) as being
19 available to provide alternate sources of capital that would enable Gryphon to retain its 100%
20 interest in BMC. At no time did O’Neil or Kaiser advise Richardson GMP that the Board had
21 authorized a \$5 million private placement, nor did they engage in bona fide discussions or ask
22 for a term sheet from Richardson GMP.

23 41. Based upon the documents produced in discovery, the paper trail for the joint
24 venture proposed by Waterton in the Restructuring Proposal inexplicably ended in late
25 November 2012. Instead of proceeding with a restructuring of Gryphon’s debt to Waterton on
26 the terms of the Restructuring Proposal, Gryphon’s Board entered into a *different* debt for equity
27 swap that led to Gryphon’s financial demise in less than 6 months. Gryphon’s Board appears to
28 have:

- 1 (a) ignored the Restructuring Proposal;
- 2 (b) Concealed the debt for equity transaction from shareholders;
- 3 (c) Intentionally ignored Richardson GMP's repeated attempts to provide
- 4 alternate financing; and
- 5 (d) Taken no steps to preserve Gryphon's value.

6 42. On January 18, 2013, the Credit Facility was amended to increase the total
7 principal amount from \$20 million to \$23 million (the "Second Amendment"). With the \$3
8 million in additional funds, Gryphon could have met its current payment obligations to
9 Waterton and avoided the risk of default that O'Neil espoused to investors.

10 43. On January 30, 2013, Waterton and Gryphon entered into a debt for equity
11 transaction pursuant to which: (1) Borealis Mining Company was converted from a Nevada
12 corporation to a Nevada limited liability company (BMC, LLC); and (2) Waterton obtained a
13 60% controlling interest in BMC, LLC in exchange for Waterton writing off only \$17 million
14 of Gryphon's then outstanding obligations to Waterton of which only \$13.3 million was
15 allocated to principal (the "January 2013 Transfer"). The January 2013 Transfer was reflected
16 in a further amendment to the Credit Facility, also dated January 30, 2013 (the "Third
17 Amendment"), under which:

- 18 (a) the principal amount outstanding was reduced to \$6,650,000, resulting in
- 19 a reduction of \$13.3 million to the principal amount outstanding at that
- 20 time;
- 21 (b) Gryphon was permitted to repay principal amounts in cash, gold or units
- 22 of Borealis. The latter was a fixed percentage of the remaining 4,000,000
- 23 shares (representing 40%) held by Gryphon in Borealis; and
- 24 (c) Principal repayments commenced January 31, 2013, and ended
- 25 November 31, 2014.

26 44. The debt equity transaction was entered into prior to Gryphon being in default
27 of its debt obligations to Waterton and, given the \$3 million injection (the "Second
28 Amendment"), was entirely unnecessary. Bockhold and Jerry Baughman (US resident, ex-
Director of Gryphon Gold and single largest shareholder) met with O'Neil at Gryphon's office

1 in Carson City on Sunday, January 27, 2013, where they presented alternative financing. Had
2 O’Neil and the board pursued Richardson GMP’s proposal Gryphon could have avoided the
3 debt equity swap and retained its 100% interest in the Borealis Mining Company.

4 45. Instead, and to accomplish the January 2013 Transfer, Gryphon and Waterton
5 entered into a Contribution Agreement, dated January 30, 2013, that reflected Waterton’s
6 acquisition of 60% of the membership interests in BMC, LLC and the rights and obligations of
7 Gryphon and Waterton as members of the newly created limited liability company. Hereinafter,
8 the Bridge Loan, the Credit Facility, the Supply Agreement, the First Amendment, the Second
9 Amendment, the Third Amendment and the Contribution Agreement may be collectively
10 referred to as the “Waterton Loan Documents.”

11 46. Pursuant to the Third Amendment and the Contribution Agreement, Gryphon
12 was obligated to make principal payments and capital calls, which it never had any prospect of
13 being able to pay. Pursuant to the Contribution Agreement, Gryphon was required to make an
14 initial capital contribution of \$1.6 million which it did not have nor was it matched by its partner,
15 Waterton, with their corresponding \$2.4 million contribution. As a result, and as part of the
16 January 2013 Transfer, Waterton provided \$4 million, purportedly of new funding, as a default
17 loan (the “Default Loan”) with highly dilutive payment provisions (10% in the first month to
18 40% for the fourth month onward). In other words, the Gryphon Board, and O’Neil by his own
19 admission, agreed to a transaction whereby Gryphon was in default of the terms of the
20 Contribution Agreement as soon as it was signed. It was a foregone conclusion that Gryphon
21 would not be able to meet its obligations under the Contribution Agreement and an additional
22 six percent (6%) of Gryphon’s membership interests in BMC, LLC would be transferred to
23 Waterton in a matter of months (the “Subsequent Transfers”).

24 47. The interest rate on the \$4 million Default Loan was not disclosed in Gryphon’s
25 public disclosure of the new “Joint Venture”:

26 <https://www.sec.gov/Archives/edgar/data/1262751/000106299313000485/exhibit99-1.htm>

27 48. The Trustee did not pursue an order compelling Waterton to provide evidence
28 of the \$4 million Default Loan actually being received by BMC LLC. On information and belief,

1 Waterton never advanced the \$4 million because the Default Loan amount included the \$3
2 million already advanced under the Second Amendment. In other words, \$3 million of the \$4
3 million Default Loan was double counted and the remaining \$1 million was never advanced,
4 yet Gryphon paid interest and suffered dilution from both the Second Amendment and the
5 Default Loan as if it had received \$7 million. Additionally, there is no evidence BMC, LLC
6 ever actually *received* the \$4 million Default Loan.

7 49. The proposal offered by Waterton by way of the Restructuring Proposal was
8 significantly more beneficial to Gryphon than the debt for equity swap resulting in the January
9 2013 Transfer for the following reasons:

- 10 (a) Under the Restructuring Proposal, the Waterton debt would have been
11 completely eliminated, but under the January 2013 Transfer, the
12 principal amount of the Waterton debt remained at \$6.65 million;
- 13 (b) Under the Restructuring Proposal, Gryphon would have received a 40%
14 interest in BMC, LLC that was not subject to dilution or loss by reason
15 of its inability to pay more on the Waterton debt, but under the January
16 2013 Transfer, Gryphon was at risk of losing all of its membership
17 interests in BMC, LLC. In fact, prior to the filing of the Bankruptcy
18 Case, Gryphon lost an additional 6% of its membership interests in BMC,
19 LLC to Waterton;
- 20 (c) Under the Restructuring Proposal Waterton indicated Gryphon would
21 have cash flow from BMC, LLC totaling \$16.8 million in 2013 and 2014.
22 Under the January 2013 Transfer, Gryphon has received no cash flow
23 from BMC, LLC; and
- 24 (d) Under the Restructuring Proposal, Gryphon had a future. Under the
25 January 2013 Transfer documents, Gryphon was obligated to make debt
26 payments and capital calls which it never had any prospect of being able
27 to pay. Gryphon was in default of the terms of the Contribution
28 Agreement as soon as it was signed and it was set on a course of near
immediate financial demise.

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

27 51. Goodhard and Kaiser have testified that the responsibility for finding financing
28 for Gryphon rested with O'Neil. Goodhard and Kaiser have also testified that they cannot recall

1 the Restructuring Proposal. However, Kaiser received a copy of the Restructuring Proposal on
2 October 22, 2012.

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

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

14 54. There is no evidence that the Gryphon Board did anything except intentionally
15 allow Waterton to create agreements that Gryphon had no chance of performing and would
16 inevitably lead to Gryphon's loss of all value. In discovery, all three directors testified they
17 understood they would continue to receive their directors' fees if the Waterton Transfer went
18 forward. The board also approved a pay increase for O'Neil on January 1, 2013, changing his
19 annual salary from \$250,000 to \$300,000. This was O'Neil's second pay raise since joining
20 Gryphon just one year earlier.

21 55. During the course of the Bankruptcy of Gryphon, the Trustee engaged Meridian
22 Advantage ("Meridian") to review the Waterton Transactions and Borealis Mining Company's
23 books and records. Meridian issued a report on November 20, 2014. Regarding the January
24 2013 Transfer, Meridian reported that not all professional accounting standards were followed
25 and/or documented. Specifically:

- 26 (a) Many documents and information that one would expect to be
27 maintained in the ordinary course of business are conspicuously absent.
- 28 (b) In addition to missing information and documents, Gryphon's
accounting books and records were not maintained to the level and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

accuracy as would be expected in a publicly held company.

- (c) The fair value adjustment recorded for the January 2013 Transfer which was the basis for the final Member’s Equity Valuation in conversion of 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.
 - (d) The adjustments and the recording of the “adjusted” balance sheet amounts fail to properly determine and report the fair value of many if not most of the assets and liabilities shown on the BMC, LLC balance sheet, including intangible assets.
 - (e) The value of the mining deposits and reclamation liability should be valued by a qualified appraiser/mining consultant or similarly qualified professional, but they were not.
 - (f) The following balance sheet items should have been appraised by a qualified real estate and/or equipment appraiser:
 - 1. Building, Office
 - 2. Trailer-Site
 - 3. Machinery & Equipment
 - 4. Office Furniture and Computer Equipment
- These items were recorded at cost, including offsetting accumulated depreciation, which is not fair value.
- (g) When accounting for fair value, it is critical that each asset and liability reported on the balance sheet be individually considered for adjustment. 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 were performed and support the required adjustments.

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

- (a) It is unclear if the Debtor (Gryphon) pursued an alternative to the Waterton financing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (b) Jim O’Neil, the Debtor’s CEO and CFO at all material times, came to the debtor from a company heavily indebted to Waterton, then after the course of the Debtor’s destruction was fully set in place, he left to go to his original employer.
- (c) Subject to actuarial verification, Denton’s has concluded the interest rates on the Waterton loans were likely in violation of the *Canadian Criminal Code* which limits real interest to 60% per annum. The remedies under Canadian law range from reducing the rate to 60%, to declaring the transaction void ab initio.
- (d) An agreement was in place for Waterton to loan the Debtor an additional \$3 Million for operating expenses but Waterton withheld it until it put in place the agreement deeming the Debtor to be in default.
- (e) The Roth ‘fairness’ opinion was so limited as to be virtually meaningless.
- (f) There was no independent valuation of the Mine at the time of the JV Transaction (January 2013 Transaction).
- (g) At the time the JV Transaction was done, it does not appear that the Debtor was in default, but the agreement put the Debtor in default as soon as it was signed.
- (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 also included deductions for some of Gryphon’s liabilities that were not assumed by BMC, LLC.
- (k) For purposes of the January 2013 Transfer, Borealis Mining Company was valued at \$27.4 million, but there was no independent valuation of Borealis Mining Company prepared at the time of the Borealis Transaction.
- (l) The Waterton valuation, which is dated January 22, 2013, was not independently verified and is based primarily on estimated book values for Borealis Mining Company assets and liabilities.
- (m) An independent and objective valuation should have been performed to

1 ensure that the then current values of all of Borealis Mining Company
2 assets and liabilities, particularly the mineral claims, had been properly
3 determined for the purposes of calculating the exchange ratios for the
January 2013 Transfer.

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

6 57. Bockhold provided PwC with copies of all correspondence with Gryphon Gold
7 prior to the release of their Initial Report. Discovery, including depositions of O’Neil and
8 Kaiser, confirmed that most, if not all, of PwC’s assertions were accurate.

9 58. At the time of the January 2013 Transfer, Gryphon obtained a fairness opinion
10 from Roth Capital Partners (“Roth”). Roth was asked to issue its opinion regarding the fairness
11 of the January 2013 Transfer from a financial point of view.

12 59. Shortly before the January 2013 Transfer closed, Roth provided Gryphon with a
13 chart indicating that it believed the value of a 60% interest in Gryphon would be between \$18.2
14 million and \$26.2 million. Before the January 2013 Transfer closed, however, Roth provided
15 Gryphon with another chart in which it changed the range of value of a 60% interest in Gryphon
16 to between \$15.6 million and \$26.2 million.

17 60. The First Roth Valuation and the Second Roth Valuation (collectively the “Roth
18 Valuations”) attempt to value Gryphon, whereas the January 2013 Transfer is based on the value
19 of Borealis Mining Company, a subsidiary of Gryphon. Roth did not adjust the information
20 provided by Gryphon to exclude the non-Borealis assets (*e.g.*, Nevada Eagle) and liabilities or
21 the projected non-Borealis Mining Company revenues, expenses and cash flows.

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

1 62. The valuation range of Gryphon as shown on the Second Roth Valuation is from
2 \$8.6 million to \$47.1 million. The Roth Fairness Opinion does not explain this very wide range
3 of value.

4 63. Roth issued its “fairness opinion” on January 29, 2013. The Fairness Opinion is
5 based upon the Second Roth Valuation. Roth’s written opinion that the January 2013 Transfer
6 was fair to Gryphon was flawed and incorrect because:

7 (a) It did not verify the accuracy of any of the financial information upon
8 which its opinion was based.

9 (b) It assumed the financial information it reviewed, mostly obtained from
10 Gryphon, was accurate and complete in all material respects.

11 (c) It assumed no responsibility to conduct any independent evaluation or
12 appraisal of Gryphon’s assets or liabilities.

13 (d) It was not provided with any valuations or appraisals and, therefore,
14 could not have evaluated the true values of Gryphon’s assets and
15 liabilities.

16 (e) The Second Roth Valuation upon which it is based is also flawed.

17 (f) It does not explain why a value of \$17 million for a 60% interest in BMC,
18 LLC is fair to Gryphon when the Roth Valuations indicate a 60% interest
19 could be worth as much as \$26.2 million.

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

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

25 64. These were the same flaws in the January 2013 Transfer that were highlighted
26 by Meridian and PwC.

27 65. Under the Restructuring Proposal, Waterton proposed to forgive \$25 million in
28 debt for a 60% membership interest in the new joint venture to be performed. This equates to
an enterprise value of \$41.7 million. Roth’s top value for a 60% interest in BMC, LLC, \$26.2
million, is consistent with an enterprise value of \$41.7 million. Roth’s mid-range value for
Gryphon, \$27.8 million, is also consistent with an enterprise value of \$41.7 million. Roth

1 nonetheless opined that a forgiveness of debt of only \$17 million was a fair exchange for a 60%
2 interest in BMC, LLC. A \$17 million forgiveness of debt for a 60% interest in a company
3 equates to an enterprise value of only \$28.3 million.

4 66. An entity acquiring a controlling interest in another company should pay a
5 premium for the control of the acquired company. Waterton did not pay a control premium for
6 its 60% membership interest in BMC, LLC.

7 67. Based upon, inter alia, the Waterton Restructuring Proposal and the Roth
8 Valuations, the January 2013 Transfer approved by the Gryphon Board was not fair to Gryphon
9 and its shareholders.

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

13 69. Because Gryphon did not receive reasonably equivalent value for the 60% equity
14 interest it transferred to Waterton, it likewise did not receive reasonably equivalent value for
15 the additional 6% equity in BMC, LLC, it transferred via the Subsequent Transfers because
16 those transfer ratios were calculated on the same flawed ratios used for the January 2013
17 Transfer.

18 70. Gryphon's shareholders were not advised of the January 2013 Transfer prior to
19 it occurring, nor was there a public disclosure prior to the transaction closing. After the January
20 2013 Transfer closed, the director defendants refused to provide necessary details of what had
21 occurred and there are significant discrepancies between Gryphon's public disclosure in their
22 SEC filings, Bockhold's email history as presented to PwC, Gryphon's Q3/2013 conference
23 call and the facts disclosed in the Bankruptcy Case and in testimony.

24 71. Neither O'Neil nor the Gryphon Board owned common shares.

25 72. O'Neil committed to Bockhold that Gryphon would not borrow more from
26 Waterton in late 2012. However, Gryphon obtained \$3 million from Waterton under the Second
27 Amendment and purportedly \$4 million under the Default Loan in mid-January 2013.

28 ///

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

4 74. George and Bell Consulting, a firm of Canadian consulting actuaries, issued its
5 opinion on July 16, 2015, in which it opines that: (a) when the Bridge Loan was entered into, it
6 carried an effective interest rate of 279.48%; (b) as the Bridge Loan was paid, the total effective
7 interest rate increased to 1,059.37%; and (c) taking all of the charges as provided under
8 Canadian law into consideration, the effective interest rate on the January 2013 Transfer was
9 77.01%.

10 75. Bockhold and Baughman were advised by O’Neil that the rate of interest on the
11 \$4 million Default Loan was 10% per month. Bockhold advised O’Neil that was in breach of
12 the *Canadian Criminal Code*. O’Neil stated that “Waterton are sharks looking for blood” Yet,
13 he ignored Bockhold’s offer to refinance the Waterton loan at ‘market’ rates (at or near 10%
14 per annum).

15 76. Allegedly, Gryphon was seeking financing to maintain their remaining 40%
16 stake. Thomas Skinner, a shareholder residing in Newfoundland, Canada with no association
17 to Bockhold, received a reply from O’Neil on February 5, 2013 stating, “I am optimistic that
18 we will be able to raise the needed funds.”

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

- 23 (a) “Bankruptcy, including a DIP financing, would have likely removed all
24 of the Gryphon shareholders ownership interest in Borealis.”
- 25 (b) “Obviously our objective is to repay the indebtedness and to continue our
26 ownership percentage.”
- 27 (c) “We believe this agreement not only strengthens Gryphon today but in
28 the long run will more quickly realize the full potential the Borealis
 property has to offer.”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (d) "...[W]e expect them to, in a matter of months, I would say to . . . be up to that 30,000 range [annual gold ounce production] that we talked about. . . . We believe that potential is significantly north of that 30,000 [oz./year]."
- (e) "We don't have a lot into drilling right now we have enough ore already scheduled out in front of us for several years."

78. Inaccurate and/or misleading statements from Tschabrun include:

- (a) "As a reminder Borealis submitted an application permit to increase existing solution flow which is currently under way with . . . the Nevada 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 produced." [Discovery disclosed that Gryphon knew that there was no plan to mine fresh ore. As COO, Tschabrun owed a duty to help Gryphon survive by mining fresh ore.]

79. Comments from shareholders include the following quotes:

- Q:** There was no requirement by the SEC or TMX to take the 60% sale to the shareholders for approval?
- AJTO:** No, not, not based on the advice that I got.
- Q:** Did you publish the fairness opinion?
- AJTO:** No. Not required to.
- Q:** Can you give us a date when do we expect that fresh ore can be placed on the heaps?
- ADT:** We hope to be in fresh ore by the latter part of March early part of April.
- Q:** Why was that converted into, exclude my ignorance on this, but why was that converted into an LLC, Borealis?
- AJTO:** It just made the restructuring easier. Most, most joint ventures that I am aware of are LLC. It just makes it easier to function that way.
- Q:** I have the press release in my hand [dated Dec 5 2012 stating they had not received the water flow permit, as restated in this conference call].
- AJTO:** Murray, Murray this can go on all day.
- MB:** I have the permit in my hand from NDEP and it's dated November 2 and it says this letter is to advise Borealis that NDEP approves the modifications.
- Q:** How much is Waterton getting in terms of their finance rate?
- 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.

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

1 81. In a meeting with Bockhold and Lewis in Vancouver January 21, 2012, O'Neil
2 cited \$4 million of aged payables and vendors threatening lawsuits plus the unexpected
3 breakdown of the boiler as triggers for the sudden need to contemplate the January 2013
4 Transfer. He reiterated this excuse in the Q3 conference call.

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

11 83. Lewis escorted Bockhold to the mine site January 31, 2013 for a site tour.
12 Bockhold met with Tschabrun and queried him about the boiler breakdown. "Don, it's a piece
13 of equipment and you are the mine manager, surely there is a reason it broke down. What's the
14 reason?" Tschabrun claimed he didn't know what caused the boiler failure and advised it was
15 sent for inspection. When asked where it was sent for inspection he claimed he didn't know.

16 84. Gryphon's legal counsel for the January 2013 Transfer was Philippe Tardif of
17 Bordner Ladner Gervais LLP, a prominent Canadian law firm. On information and belief, Tardif
18 acted in a manner favorable to Waterton to the detriment of Gryphon. There is no evidence that
19 Gryphon engaged truly independent legal advice. Bockhold provided Tardif, O'Neil, Kaiser,
20 Goodhard and former Gryphon director Terrance Cryan detailed explanations of his due
21 diligence. Both Tardif and the director defendants owed a fiduciary duty to Gryphon. As
22 Gryphon counsel, Tardif had a duty to Gryphon to advise against the January 2013 Transfer
23 once he became aware of Bockhold's evidence. The director defendants were aware of the same
24 evidence and their inaction was also in breach of their fiduciary duty.

25 85. After protest by shareholders about the January 2013 Transfer, the Gryphon
26 Board appointed a Special Committee of Kaiser and Goodhard to review the transaction.
27 Bockhold's request that Tardif attend the call was ignored. Instead Kaiser selected Reid Godbolt
28 of Jones & Keller, an individual with no prior knowledge of the Borealis Mine or the January

1 2013 Transfer. On information and belief, the Special Committee review was a charade, solely
2 to placate shareholders and was not a reasonable review.

3 86. Bockhold and Baughman followed up with Goodhard and Kaiser immediately
4 after the Special Committee meeting seeking clarification of the interest rates on the \$4 million
5 Default Loan. Kaiser had advised in early February that it was “all spelled out in the [SEC]
6 filings.” The documents filed with the SEC were lengthy, extremely complex, intentionally
7 confusing and lacked normal public company disclosure, hence the need for clarification. In
8 addition, there were no audited financial statements to rely on. Neither Kaiser nor Goodhard
9 replied to Bockhold, Baughman, Skinner or other shareholders repeated requests for clarity
10 and/or transparency.

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

13 <https://www.sec.gov/Archives/edgar/data/1262751/000106299313001719/exhibit99-1.htm>

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

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

25 90. Tardif was also aware of the Restructuring Proposal which allowed Gryphon to
26 retain 100% of the Borealis property.

27 91. Following the closing for the January 2013 Transfer, Waterton took over
28 management of the operations of the Borealis Mine. Waterton caused BMC LLC to continue to

1 place low grade previously leached material on the leach pad knowing that the results would be
2 poor and that poor performance of the Borealis Mine would make it impossible for Gryphon to
3 meet its obligations under the Contribution Agreement.

4 92. On information and belief, the Gryphon Board did nothing to pressure BMC LLC
5 to pursue efforts to increase production to help Gryphon meet its obligations. During discovery
6 neither O’Neil, Kaiser nor Goodhard provided evidence demonstrating their attempt to fulfill their
7 fiduciary duty to Gryphon Gold.

8 93. In May 2013, O’Neil resigned as a director. Shortly thereafter he returned to
9 Jipangu International.

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

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

20 96. Bockhold made repeated attempts to engage with Tardif seeking his assistance
21 and support. All of his requests were ignored.

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

28 ///

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

5 99. The actions, and inactions detailed above, as they relate to Gryphon’s former
6 officers and directors, are the subject of a shareholder derivative suit currently pending before the
7 Second Judicial District Court for the State of Nevada, Case No. CV17-00461.

8 100. Based upon information and belief, Waterton is believed to have directed and/or
9 influenced the actions and inactions by Gryphon’s former officers and directors complained of
10 above and for this reason, Gryphon, through its lawful custodian, now seeks redress as against
11 Waterton.

12 **C. The Filing of Bankruptcy by Gryphon:**

13 101. By the end of July 2013, Gryphon was about to default under the Third
14 Amendment, the Contribution Agreement which would have resulted in it losing its remaining
15 34% membership equity in BMC, LLC to Waterton. To prevent this, Gryphon shareholders
16 filed for appointment of a receiver to put Gryphon into bankruptcy. This action induced the
17 Gryphon Board to file a voluntary petition for relief under Chapter 11 of the United States
18 Bankruptcy Code on July 29, 2013.

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

24 103. A bankruptcy Trustee, Christina Lovato (the “Trustee”) was appointed on
25 December 13, 2013.

26 104. The Trustee conducted document discovery. The Trustee hired mining experts
27 to assess the Borealis Mine and Meridian Advantage was hired to provide a forensic review of
28 financial records.

1 105. The Trustee initially selected Knight Piesold as the consultant tasked with
2 conducting an operational and technical review of the Borealis Mine. Knight Piesold had
3 extensive prior knowledge of the property.

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

- 14 • didn’t use the price of gold at the time of the January 2013 Transfer (\$1590 per
15 ounce vs \$1200);
- 16 • Double counted capital expenditures.
- 17 • Omitted including Run-of-Mine (non-crushed) ore in their analysis of the
18 projects cash flows; and
- 19 • Ascribed zero value to the NI 43-101 compliant 750,000 M&I ounce sulphide
20 gold deposit known as the “Graben Zone”.

21 107. All errors were disclosed by Bockhold/Dawson, but the Trustee took no action
22 on them.

23 108. During the Bankruptcy, Bockhold/Dawson asserted to the Court that as a public
24 company, Gryphon shareholders had a right, and Gryphon Gold Corp. an obligation, to provide
25 third party validation of financial and operational results as a precursor to formulating a plan to
26 emerge from Chapter 11. PwC was selected for the forensic financial review and they engaged
27 Micon International Ltd. to conduct an operational review and valuation of the Borealis Mine.

28 ///

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

5 110. Although the Trustee received large volumes of documents in 2014, many key
6 Gryphon documents were never obtained. The Gryphon Board failed to ensure critical records
7 were preserved.

8 111. The Trustee provided commentary on this in their Status Report dated July 21,
9 2014. “On May 14, 2014, the Trustee took a limited scope Rule 2004 examination of Lisanna
10 Lewis regarding documents BMC LLC claimed had been destroyed or were otherwise
11 unavailable. Ms. Lewis was Debtor’s Treasurer and Vice President and is currently a BMC LLC
12 employee. At her Rule 2004 examination, Ms. Lewis testified that most of Debtor’s documents,
13 including emails, were stored on a Canadian-based computer server run by i-worx Enterprises
14 (“i-worx”). Ms. Lewis further testified that shortly before Debtor filed its July 29, 2013 Chapter
15 11 bankruptcy petition, the name on Debtor’s i-worx account was changed to BMC LLC. Ms.
16 Lewis explained:

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

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

24 112. Plaintiff believes that Ms. Lewis continues to be employed by Borealis LLC,
25 which is now owned 100% by Waterton. Since joining Borealis, LLC, Ms. Lewis has become
26 an officer of a number of private “shell” companies registered in Nevada.

27 113. Gryphon’s former directors, O’Neil, Kaiser and Goodhard, were deposed in July
28 2015, in the course of the bankruptcy proceedings.

1 114. The following results were set forth in documents released by the Nevada
2 Department of Taxation and the Net Proceeds of Minerals Bulletin (“NPM Bulletin”)
3 concerning the earnings of the Borealis Mine which highlight unusual and inexplicable revenues
4 and profits:

<u>Fiscal</u> <u>Year</u>	<u>Revenue</u>	<u>Net Profit</u>	<u>Net Proceeds of</u> <u>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

14 115. Based on earnings of US \$72,686,944.00 reported in 2013-2014 and using
15 valuation metrics at that time, the Borealis Mine would have an Enterprise Value between \$1.23
16 and \$1.45 Billion. This information is inconsistent with the valuation in the Roth Fairness
17 Opinion and Waterton’s testimony in Bankruptcy Court where they vehemently argued the
18 Borealis property is uneconomic and worth less than the value of their alleged \$27.6 million in
19 loans.

20 116. Waterton took control of the Borealis Mine in January, 2013. Under the direction
21 of Mine Manager Bob Cassinelli (“Cassinelli”), Waterton loaded fresh ore on the leach pad
22 beginning in April, 2013, but did so only until July, 2013. Gold production doubled during this
23 period, going from 800 to 1600 oz. per month. Cassinelli has indicated that Waterton
24 intentionally reverted back to re-leached ore when Gryphon filed for bankruptcy in July, 2013.
25 Upon realizing that Waterton had no intention of running the mine efficiently and profitably,
26 Cassinelli resigned from his position. It is mathematically impossible that the Mine generated
27 a profit of \$72.7 million in 2013.

1 117. During the bankruptcy, Bockhold Dawson made numerous requests, including
2 to the Trustee, to seek regulatory relief from the SEC, the BC Securities Commission (“BCSC”),
3 the Ontario Securities Commission (“OSC”), the Royal Canadian Mounted Police (“RCMP”),
4 the Ontario Police, the Vancouver Police and the IIROC. On information and belief, no action
5 has been initiated by any of these regulatory or policing entities.

6 118. Approximately 63% of the outstanding shares of Gryphon Gold are owned by
7 US residents and 37% are owned by Canadian residents.

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

11 120. Specific requests were made of the BCSC and OSC to submit a Motion to
12 prevent dismissal of the Bankruptcy case. Neither entity replied.

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

17 122. As a result of the dismissal of the Gryphon Bankruptcy, the public shareholders of
18 Gryphon lost all value of their shareholding in Gryphon because:

- 19 (a) Gryphon was subjected to loans with rates of interest of 1057%, 279%,
20 77% and ~86%;
- 21 (b) Waterton’s proof of claim in the Bankruptcy Court included the above-
22 noted interest rates and the \$4.0 million Default Loan, which was in default
23 when signed, was likely double-counted and which was not proven to have
24 been provided to Borealis on Gryphons behalf;
- 25 (c) Waterton successfully refused to provide documents relating to negotiation
26 of the January 2013 Transfer;
- 27 (d) The Gryphon Board and officers failed to insist on independent valuations
28 for the January 2013 Transfer, which was damaging to Gryphon in light of
the evidence adduced during the bankruptcy proceedings that Gryphon’s
value greatly exceeded the value upon which the transfer was based; and

1 (e) Waterton was the only secured creditor; the rights of unsecured creditors
2 and shareholders were lost despite having legitimate claims.

3 123. During argument which resulted in the order dismissing the Dawson complaint, the
4 Court suggested that given the alleged breach of the *Canadian Criminal Code*, Gryphon
5 shareholders should seek relief in Canada. The Ontario Securities Commission previously stated
6 they did not have jurisdiction in Nevada and they continue to hold that view.

7 124. Gryphon shareholders also reached out to the BC Securities Commission and to
8 the Minister of Finance, the Honorable William Francis Morneau. The BCSC re-affirmed their
9 position that enforcement was outside their jurisdiction. There was no reply from the Honorable
10 Ministers office.

11 125. Pursuant to the Bankruptcy Court’s recommendation, in a letter dated January 15,
12 2016, the Investment Industry Regulatory Organization of Canada (“IIROC”) requested a copy of
13 the Initial Report submitted by PricewaterhouseCoopers and held under court seal. At a hearing
14 held on March 1, 2016, Waterton argued it was defamatory. The Bankruptcy Court denied IIROC’s
15 request, choosing instead to release the report with redactions.

16 **D. Waterton’s Public Persona and History with Gryphon’s Board:**

17 126. On January 24, 2005 James T. O’Neil (the same “O’Neil” referred to above who
18 was the former President and CEO of Gryphon), was promoted to Vice- President of Finance at
19 Apollo Gold following the resignation of Robert Llee Chapman who tendered his resignation
20 “to pursue other business interests.” O’Neil announced the appointment of Chapman as
21 Gryphon Gold’s Chief Financial Officer April 2, 2012. Chapman resigned July 26, 2012, only
22 3 months later, when O’Neil was appointed joint CEO/CFO. On information and belief,
23 Chapman’s resignation coincided with the death of Gryphon Director, Donald W. Gentry July
24 2, 2012. Gentry, a retired Professor Emeritus and Dean of Engineering at the Colorado School
25 of Mines joined the Gryphon Board in 2005 and was the only board member with no affiliation
26 of any kind with Waterton. This enabled O’Neil, Kaiser and Goodhard to have operational and
27 Board control of Gryphon Gold.

28 ///

1 127. On information and belief, Waterton, O’Neil, Kaiser, Cryan, Goodhard, Lewis,
2 Chapman, Tschabrun, Wells and Tardif were involved in influencing the terms of the January,
3 2013 Transfer to the detriment of the shareholders of Gryphon Gold.

4 128. According to an article in Forbes magazine dated March 4, 2002 entitled *Toxic*
5 *Stocks*, Isser Elishis, the Chief Investment Officer of Aqua Wellington is quoted as saying, “We
6 created the market for [equity lines],” commonly referred to as “death spiral loans”. Isser Elishis
7 is the founder and CIO of Waterton Global Resources Management, the parent company of
8 Waterton Global Value.

9
10 129. Waterton has raised \$US1.925 Billion from sovereign wealth funds, public and
11 private investors in three tranches:

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

15 (b) US \$1 Billion Waterton Precious metals Fund II in 2014 (*Globe &*
16 *Mail*) and US \$725 in 2016:
17 [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)
18 [resource-management-raises-another-us725-million-for-mining-private-](http://business.financialpost.com/news/mining/waterton-global-resource-management-raises-another-us725-million-for-mining-private-equity-deals)
19 [equity-deals.](http://business.financialpost.com/news/mining/waterton-global-resource-management-raises-another-us725-million-for-mining-private-equity-deals)

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

21 130. Public investors include:

22 (a) Silver State Opportunity Fund:
23 [http://www.nevadatreasurer.gov/uploadedFiles/nevadatreasurer.gov/con-](http://www.nevadatreasurer.gov/uploadedFiles/nevadatreasurer.gov/content/NCIC/Meetings/2013/2013-11-05_Minutes_NCIC.pdf)
24 [tent/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)

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

(c) University of Michigan:
[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)
[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 **E. The Hidden Gold:**

2 131. During a site visit conducted by the Trustee's Special Counsel during Gryphon's
3 Bankruptcy, Greg Wilson, on August 13, 2014 there was evidence of carbon fines in the
4 pregnant pond (the "Pond").

5 132. Industry "Best Practice" specifically avoids allowing carbon to enter the
6 pregnant pond and the Borealis Mine was designed as a closed circuit system that adhered to
7 industry practice. The only time pregnant solution should come in contact with carbon is in the
8 carbon columns. Residual carbon fines are processed in a carbon press and sent to an offsite
9 refractory for gold recovery. Carbon fines re-directed to the pregnant pond would reduce
10 recordable gold recoveries from the carbon columns.

11 133. On information and belief, Waterton must have had previous knowledge of the
12 impact and financial value of residual carbon in a pregnant/barren pond through their
13 involvement with Scorpio Golds Mineral Ridge mine.

14 134. Waterton continued to expand production capabilities at BMC LLC during
15 bankruptcy. A new heap leach pad and overflow pond were funded and constructed. Google
16 Earth images in September 2013 and February 2014 depict the site following the January 2013
17 Transfer and during bankruptcy proceedings.

18 135. On July 15, 2016 Steve Craig, former VP of Exploration at Gryphon Gold,
19 conducted a flyover of the Borealis property. Photographs confirm the new pad and pond were
20 constructed and ready for use. Waterton put the Borealis Mine on care and maintenance in the
21 fall of 2015 alleging it was uneconomic due to uncrushable ore and poor recoveries. This
22 contributed to the dismissal of the adversary action in Gryphon's Bankruptcy and ultimately the
23 dismissal of Gryphon's Bankruptcy.

24 136. Borealis Mining Company, LLC recently applied for, and received approval to
25 re-open the Borealis Mine. "Long term plans indicate the Permittee will return to active surface
26 mining with the expansion of five previously mined pits: Freedom Flats, Borealis, East
27 Ridge/Goldview, Northeast Ridge, and Polaris (formerly referred to as Deep Ore Flats)."
28 Collectively these zones total 5,144,000 tons of ore which, in previous testimony in Bankruptcy

1 Court, Waterton claimed were uneconomic because the ore could not be crushed. The price of
2 gold today (US\$1254) is not materially different than the price during bankruptcy proceedings
3 (US\$1150 - \$1350). If fresh ore couldn't be crushed during bankruptcy, why would Waterton
4 re-permit the Mine to process the same fresh-ore 2 years later?

5 137. Waterton and Borealis intentionally diverted large amounts of gold/silver-laden
6 carbon (the "Carbon") together with super sacks of carbon pellets into the Pond beginning in
7 the summer of 2013 and then used a solution to mask the carbon under the surface.

8 138. This intentional practice of depositing carbon into the Pond is believed to have
9 occurred from July, 2013 until at least December, 2015, during which time Waterton had full
10 control of the Borealis Mine and put the operation on temporary shutdown.

11 139. This Carbon was in existence during Gryphon's Bankruptcy, yet was not
12 disclosed by Borealis nor Waterton which were conducting operations of the mine. In fact,
13 employees of the mine were directed to use the Pond for carbon storage with full knowledge
14 that the Carbon contained gold by management who indicated that the hidden gold/silver
15 constituted "money in the bank."

16 140. Waterton instructed Mine employees to hide evidence of this diversion during
17 visits by shareholders and attorneys for the shareholders and the Bankruptcy Trustee.

18 141. When questioned during a visit to the Mine on August 13, 2014, Waterton
19 executive Isser Elishis indicated that carbon that was scattered about the group where a pipe
20 dumped solution was probably due to an accidental spill from a large carbon bag further up the
21 lined ditch. While this statement seemed plausible at the time, it later became apparent that fine
22 carbon was being sent to the Pond via a large, blue hose (roughly the size of a fire hose) and it
23 was not an *accidental* spill – it was spill-over from carbon super sacks being dumped directly
24 into the Pond.

25 142. This diversion of gold into the Pond, along with the purposeful and intentional
26 efforts to ensure that the Mine underperformed commenced when Waterton took over the
27 Borealis Mine. These efforts include, but are not limited to: false claims that the Mine was
28 unable to process new ore (containing a higher concentration of gold) due to concerns about the

1 Mine's crusher, the intentional use of previously leached ore and limiting the installation and
2 use of proper leach lines on top of the pad.

3 143. Estimates of the value of the gold contained in the Pond are in excess of
4 US\$45million.

5 144. Upon learning that Waterton applied to re-permit the Mine to process fresh ore,
6 Bockhold/Dawson filed the above-mentioned, derivative shareholder lawsuit against the former
7 officers and directors of Gryphon.

8 145. Based upon its own investigation as well as testimony from a former Mine
9 employee, rather than reopening the Mine to process fresh ore, Waterton has begun toll-
10 processing carbon from nearby mine, Ruby Hill Mine (also controlled by Waterton) and is
11 pumping carbon fines from a directly into the Pond using a new, larger green hose in lieu of the
12 smaller, blue hose used previously.

13 146. Information evidencing these actions first became available in July of 2015 and
14 with the recently discovered activities at the Pond, discussed in detail below, was Plaintiff
15 compelled to take appropriate action. Waterton obtained control of the Pond and began its
16 diversion of the gold-laden Carbon at this time, or shortly thereafter, as well.

17 **F. The Need for Injunctive Relief to Maintain the Status Quo of Borealis Mine and the**
18 **Carbon:**

19 147. Based upon surveillance commissioned by Bockhold/Dawson in July, 2018,
20 Waterton and Borealis have been conducting operations, at nighttime only, focused solely on the
21 Pond utilizing floodlights. In a normal heap-leach mining operation, the contents of a pond are
22 never a focus of attention.

23 148. Based upon information and belief and, Gryphon fears that these operations involve
24 the removal of Carbon previously stored in the Pond and may be an attempt to remove the gold-
25 laden Carbon. Absent appropriate injunctive relief, Gryphon will lose the opportunity to conduct a
26 proper assay of the Carbon to determine if it is in fact, laden with gold which was purposely hidden
27 to the detriment of Gryphon and its shareholders. Due to the recent addition of carbon from Ruby
28 Hill Mine, if the Pond is emptied prior to Gryphon being permitted to obtain core samples and

1 assays, it will be impossible to distinguish between the value of gold fraudulently hidden in the
2 Pond from the other gold derived from Ruby Hill Mine.

3 149. An assay/taking of core samples will permit Gryphon to ascertain the presence of
4 gold/silver in the Pond and to show that Waterton purposely caused it to be stored there during the
5 pendency of Gryphon's Bankruptcy.

6 **III.**
7 **FIRST CLAIM FOR RELIEF**
8 **(Fraud/Intentional Misrepresentation)**

9 150. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1
10 through 149, above, and incorporates the same herein as if set forth in their entirety.

11 151. Defendants made multiple false representations throughout Gryphon's Bankruptcy
12 case concerning the value of Gryphon and its assets, the continued economic viability of Gryphon
13 and Waterton's involvement with Gryphon.

14 152. Waterton knew or believed that its representations were false.

15 153. Waterton intended to induce Gryphon and its appointed bankruptcy trustee to
16 refrain from acting based upon these false representations.

17 154. Gryphon and the Bankruptcy Court justifiably relied upon Waterton's
18 representations.

19 155. Gryphon has been damaged by the loss of its entire interest in the Borealis Mine,
20 which damage is a minimum of \$45 million dollars of gold lying in the Pond. This figure could be
21 well in excess of US\$300million including the equipment, bonding, ADR facility, miscellaneous
22 assets and gold reserves that are now known to be economically viable.

23 **IV.**
24 **SECOND CLAIM FOR RELIEF**
25 **(Breach of the Implied Covenant of Good Faith & Fair Dealing – Tortious Breach)**

26 156. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1
27 through 155, above, and incorporates the same herein as if set forth in their entirety.

28 157. As detailed above, Gryphon and Waterton entered into several contracts for
financing/additional financing of Gryphon's operation of the Borealis Mine.

1 158. Waterton owed a duty of good faith to Gryphon arising from these contracts.

2 159. A special element of reliance and/or fiduciary duty existed between Gryphon and
3 Waterton where Waterton was in a superior or entrusted position.

4 160. Waterton breached the duty of good faith by engaging in misconduct.

5 161. Gryphon has been damaged by the loss of its entire interest in the Borealis Mine,
6 which damage is a minimum of \$45 million dollars of gold lying in the Pond. This figure could be
7 well in excess of US\$300million including the equipment, bonding, ADR facility, miscellaneous
8 assets and gold reserves that are now known to be economically viable.

9 **V.**

10 **THIRD CLAIM FOR RELIEF**

11 **(Injunctive Relief: Temporary Restraining Order & Preliminary Injunction)**

12 162. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1
13 through 161, above, and incorporates the same herein as if set forth in their entirety.

14 163. As detailed above, Waterton and Borealis have misappropriated assets, specifically
15 gold and silver-laden carbon, which Gryphon has an interest.

16 164. Based upon its investigation, Gryphon believes that Waterton and Borealis are
17 presently taking actions to i) remove this gold-laden carbon from the Mine and/or ii) mix it with
18 gold-laden carbon from another Mine, making any attempt to distinguish it from that acquired from
19 the Borealis Mine difficult if not impossible.

20 165. Plaintiff will suffer irreparable harm unless it is granted appropriate injunctive
21 relief in the form of i) a Temporary Restraining Order barring the Defendants from taking any
22 action to remove or in any, way, shape or form, modify the Pool and its contents, and ii) an
23 Injunction requiring the Defendants to make the Pool available for an assay and/or core sample to
24 ascertain the contents of the carbon contained therein.

25 **VI.**

26 **CONCLUSION**

27 Waterton engaged in a predatory scheme to divest Gryphon and its shareholders of the
28 entirety of the value of the Mine by virtue of the Debt-For-Equity Swap, installing officers and
directors at Gryphon whom would assist with their efforts. Waterton's loans to Gryphon were

1 purposely structured to lead to an immediate default, whereby Waterton would take over control
2 of the Mine, and once such control was secured, Waterton engaged in a systematic ploy to i) divert
3 valuable gold/silver-laded carbon to a holding pond and to ii) purposely undermine and prevent
4 the Mine's ability to extract gold and derive profits to the detriment of Gryphon and its
5 shareholders.

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

7 1. For judgment in favor of Plaintiff and against the defendants, jointly and
8 severally, for fraud/intentional misrepresentation as alleged herein;

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

10 3. For punitive damages;

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

13 5. For appropriate injunctive relief barring Waterton from taking any action with
14 respect to the ponds at the Mine and affirmatively requiring Waterton to permit Gryphon to
15 conduct an assay of the pond/s; and

16 6. For such other and further relief as the Court deems just and proper under the
17 circumstances.

18 **AFFIRMATION**
19 **Pursuant to NRS 239B.030**

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

22 DATED this 27th day of July, 2018.

23 WOODBURN AND WEDGE

24
25 By: /s/ Seth J. Adams
26 W. Chris Wicker, Esq.
27 Nevada Bar No. 1037
Seth J. Adams, Esq.
Nevada Bar No. 11034
Attorneys for Gryphon Gold Corporation