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1 **FFCL**  
2 JAMES E. WHITMIRE, ESQ.  
3 Nevada Bar No. 6533  
4 [jwhitmire@nevadafirm.com](mailto:jwhitmire@nevadafirm.com)  
5 SANTORO, DRIGGS, WALCH,  
6 KEARNEY, HOLLEY & THOMPSON  
7 400 South Fourth Street, Third Floor  
8 Las Vegas, Nevada 89101  
9 Telephone: 702/791-0308  
10 Facsimile: 702/791-1912

11 *Attorneys for Defendants / Counterclaimants*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 BELGO-NEVADA LTD., a Nevada corporation;  
15 DE SONNEVILLE GOLD LLC, a Delaware  
16 limited liability company; and DE  
17 SONNEVILLE MINING LLC, a Delaware  
18 limited liability company,

19 Plaintiffs,

20 v.

21 SILVER VIKING CORPORATION, a Nevada  
22 corporation; EINAR C. ERICKSON, a Utah  
23 resident; WARREN M. CHURCH, a Utah  
24 Resident; DOES 1 through X, inclusive; and  
25 ROE CORPORATIONS I through X, inclusive,

26 Defendants.

Case No.: A-10-608861-B  
Dept. No.: XI

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND ORDER  
STRIKING PLEADINGS AND  
ENTERING DEFAULT AGAINST  
DENNIS VAN KERREBROECK, BELGO-  
NEVADA LTD., DE SONNEVILLE GOLD  
LLC, AND DE SONNEVILLE MINING  
LLC**

**Hearing Date: June 30, 2010  
Hearing Time: 8:30 a.m.**

27 ALL RELATED CLAIMS

28 On June 11, 2010, Defendants/Counterclaimants SILVER VIKING CORPORATION  
("SVC"), EINAR C. ERICKSON ("Erickson"), and WARREN M. CHURCH ("Church" and  
collectively with SVC and Erickson for purposes of this Order "Counterclaimants") filed their  
Motion for Order to Show Cause why the Court should not Hold Plaintiffs/Counterdefendants in  
Contempt and Strike their Pleadings ("Motion for OSC"). The Motion was scheduled for  
hearing on June 30, 2010, at 8:30 a.m.

08548-01/613998

SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON



1 On June 30, 2010, the matter was called. Counterclaimants appeared and were  
2 represented by the law firm Santoro, Driggs, Walch, Kearney, Holley & Thompson. The  
3 hearing transcript is hereby incorporated by reference as if fully set forth herein.

4 Plaintiffs/Counterdefendants DENNIS VAN KERREBROECK ("DVK"), BELGO-  
5 NEVADA LTD. ("Belgo"), DE SONNEVILLE GOLD LLC ("DSG"), and DE SONNEVILLE  
6 MINING LLC ("DSM") (collectively "Counterdefendants"), and each of them, failed to appear  
7 either personally or through retained counsel.

8 Notwithstanding Counterdefendants' failure to appear, the Court conducted an  
9 evidentiary hearing. In connection therewith, the Court accepted evidence and testimony from  
10 Counterclaimants relating to the allegations in the Counterclaim and the allegations, requests,  
11 and arguments in the Motion. In connection with the hearing, among other things,  
12 Counterdefendants presented evidence and arguments regarding the factors and considerations  
13 under Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 787 P.2d 777 (1990) and Foster v.  
14 Dingwall, 2010 WL 679069 (Nev. 2010).

15 Having carefully reviewed the papers and pleadings filed in this action, the arguments of  
16 counsel, and the evidence and testimony presented at the evidentiary hearing, the Court now  
17 finds, concludes and orders as follows:

18 **FINDINGS OF FACT**

19 1. Plaintiffs Belgo, DSG and DSM served their Complaint and Motion for  
20 Temporary Restraining Order and Preliminary Injunction on Order Shortening Time ("Motion  
21 for TRO") on or about January 29, 2010, seeking to restrain and enjoin Silver Viking from  
22 asserting any right or claim to title to certain mining claims Silver Viking had owned for  
23 decades.

24 2. Counterclaimants opposed the Motion for TRO and filed a Verified Counterclaim  
25 seeking, *inter alia*, quiet title to the mining claims and alleging that DVK was the alter-ego of the  
26 Counterdefendant entities. See Verified Countercl.

27 3. On February 9, 2010, the Court heard argument on the Motion for TRO and  
28 issued an Interim Order prohibiting either set of parties from alienating, transferring, selling, or

1 otherwise encumbering the mining claims. See Interim Order. The Court instructed the parties  
2 not to shred anything or erase any computer information and further ordered that an evidentiary  
3 hearing would be set by the Court at the time of the parties' mandatory Rule 16 conference.

4 **A. Counterdefendants Fail to Comply with Court's Orders.**

5 4. On March 1, 2010, the parties, through their respective counsel, submitted the  
6 mutually agreed upon date of March 26, 2010 to the Court for their Rule 16 Conference.

7 5. On March 4, 2010, the Court issued a Business Court Order whereby it ordered  
8 the mandatory Rule 16 conference would be held on March 26, 2010 in District Court  
9 Department XI. See Business Court Order. The Court further ordered that the parties were  
10 required to attend and that failure to comply with the order may result in the imposition of  
11 sanctions. See id.

12 *i. Counterdefendants' First Failure to Appear at Mandatory Rule 16 Conference.*

13 6. On March 26, 2010, Counterdefendants failed to appear for the mandatory Rule  
14 16 conference and moved to continue the conference.

15 7. Counterclaimants appeared at the Rule 16 conference and opposed the motion to  
16 continue citing the facial implausibility of Counterdefendants' claims and the fact that DVK  
17 would not be able to appear at future hearings based reports that he was on the lam due to his  
18 connection with a stolen 68-carat diamond. See Opp'n to Mot. to Continue.

19 8. The Court denied Counterclaimants' request to strike Counterdefendants'  
20 pleadings and sanctioned Counterdefendants \$750 to be paid to the Clark County Pro Bono  
21 Project. See Order regarding Mot. to Continue.

22 9. Counterdefendants' counsel noted that DVK, the designated representative of the  
23 Plaintiff, would be available after April 17, 2010. See March 26, 2010 minute order.

24 10. The mandatory Rule 16 conference was rescheduled for April 30, 2010, and  
25 Counterdefendants were warned that failure to appear may result in additional, more severe  
26 sanctions. See Order regarding Mot. to Continue.

1           ii.     Counterdefendants' Second Failure to Appear at Mandatory Rule 16 Conference.

2           11.    On April 30, 2010, Counterclaimants again appeared for the continued Rule 16  
3 conference; however, Counterdefendants failed to appear for the second conference which had  
4 been rescheduled to a time that Counterdefendants stated that they would be able to participate.

5           12.    The Court allowed DVK to appear telephonically and warned him, "I'm going to  
6 give you one last chance to be here in the state of Nevada for my Rule 16 conference . . . And I  
7 anticipate you're probably going to get to have your deposition taken at the same time." See  
8 4/30/10 Hr'g Tr.

9           13.    Counterclaimants again requested the Court strike Counterdefendants' pleadings  
10 and enter judgment in Counterclaimants' favor due to Counterdefendants' failure to comply with  
11 the Court's Orders.

12           14.    The Court denied Counterclaimants' second request. Accordingly, the Court  
13 continued the Rule 16 conference for a second time, to June 11, 2010. See id.

14           iii.   Counterdefendants' Third Failure to Appear at Mandatory Rule 16 Conference.

15           15.    On June 11, 2010, Counterclaimants again appeared and Counterdefendants failed  
16 to appear for the third mandatory Rule 16 conference which had been rescheduled for a time  
17 agreeable to Counterdefendants.

18           16.    At that time, Counterclaimants again requested the Court strike  
19 Counterdefendants' pleadings. The Court declined to grant the request.

20           17.    Counterclaimants then submitted their Motion for OSC and the Court ordered that  
21 Counterdefendants, by and through DVK, appear on June 30, 2010 at 8:30 a.m. and show cause  
22 why they should not be held in contempt, why their pleadings should not be stricken, and why  
23 judgment should not issue in favor of Counterclaimants. See Mot. for OSC.

24           iv.    Counterdefendants' Failure to Appear at Order to Show Cause Hearing.

25           18.    On June 30, 2010, DVK, on his own behalf and on behalf of the  
26 Counterdefendant entities, failed to appear, as ordered, to show cause why they should not be  
27 held in contempt, why their pleadings should not be stricken, and why judgment should not issue  
28 in favor of Counterclaimants.

1 19. Counterdefendants have been ordered to appear at four separate hearings,  
2 scheduled at their convenience, and have failed to appear each time.

3 20. Conversely, Counterclaimants have appeared at each of the aforementioned  
4 hearings.

5 **B. Counterdefendants Fail to Participate in Discovery in Good Faith.**

6 *i. Counterdefendants Fail to Retain Evidence and Provide Adequate Responses.*

7 21. On March 8, 2010, Counterclaimants propounded their first set of Requests for  
8 Production of Documents upon Counterdefendants seeking, *inter alia*, to examine the  
9 computer(s) upon which business related to the claims and defenses had been conducted.

10 22. Counterclaimants have alleged that Counterdefendants had filed false deeds to the  
11 subject property by manipulating signatures pages from authentic documents and wrongfully  
12 attaching them to fraudulent deeds.

13 23. Accordingly, examination of Counterdefendants' computers was critical to prove  
14 Counterdefendants' fraudulent conduct.

15 24. Pursuant to NRCP 34(b), Counterdefendants' responses were due on April 12,  
16 2010. See also EDCR 1.14(d).

17 25. On April 16, 2010, four days after the responses were due, Counterdefendants  
18 provided Counterclaimants with incomplete responses to Counterclaimants' RFPs.

19 26. Counterdefendants failed to respond to certain requests, failed to provide  
20 Counterclaimants with any additional documents, and responded that "the laptop computer upon  
21 which Mr. Van Kerrebroeck drafted, sent and received email correspondence and generated  
22 documents during the time frame relevant to this matter 'blew up' and files on the hard drive  
23 were unrecoverable." See Counterdefendants' Resps. to RFPs.

24 27. At the second Rule 16 conference on April 30, 2010, the Court inquired regarding  
25 the status of the laptop. DVK, via telephone, represented he had conducted all business relevant  
26 to the claims at issue on his laptop, that he had not backed his hard drive up, and that all data on  
27 his laptop was irretrievably lost. See 4/30/10 Hr'g Tr. DVK represented that he had taken the  
28 laptop to Relvate IT, a computer repair store in Toronto, Canada. See id.



1           28.    The Court instructed DVK to provide the contact information for Relvate IT to  
2 Counterclaimants by May 5, 2010. See id. DVK failed to provide Counterclaimants with the  
3 information as instructed by the Court. Counterclaimants have been unable to locate any  
4 information for Relvate IT in Toronto, Canada and have been unable to verify DVK's  
5 representations.

6           ii.    Counterdefendants Fail to Appear for Deposition or Respond to Interrogatories.

7           29.    At the April 30, 2010, Rule 16 conference, the Court instructed DVK to be  
8 prepared to have his deposition taken at the June 11, 2010 Rule 16 conference. See id.

9           30.    The parties agreed on the record that DVK's deposition would be taken on June  
10 10, 2010. See id.

11           31.    Counterclaimants' propounded interrogatories and noticed the deposition of DVK  
12 for June 10, 2010. Both the interrogatories and the notice of deposition were served by receipt of  
13 copy on May 7, 2010. Pursuant to NRCP 33(b)(3) the answers to the interrogatories were due on  
14 June 7, 2010.

15           32.    DVK failed to respond to the interrogatories.

16           33.    DVK failed to appear for deposition on June 10, 2010.

17           iii.   Counterdefendants Fail to Reply or Respond to Amended Counterclaim.

18           34.    On May 18, 2010 Counterclaimants filed their First Amended Counterclaim and  
19 served it by mail. Pursuant to NRCP 12(a)(4)(B), and allowing three days for mailing,  
20 Counterdefendants' Reply was due on June 4, 2010.

21           35.    Counterdefendants failed to Reply to the First Amended Counterclaim.

22           36.    On June 28, 2010, Counterclaimants served a Three Day Notice of Intent to Take  
23 Default.

24           37.    On July 9, 2010, Counterclaimants filed Default documents with the Court.

25           C.    Summary of Counterdefendants' Litigation Abuses.

26           38.    The following sets forth a non-exclusive list of Counterdefendants' abuses during  
27 the litigation process. Counterdefendants have: (1) ignored valid Court orders by failing to  
28 appear at three Rule 16 conferences and failing to appear and show cause why they should not be



1 held in contempt; (2) failed to participate in discovery by failing to preserve evidence, failing to  
2 provide adequate responses to RFPs, failing to respond at all to interrogatories, and failing to  
3 appear at their deposition; and (3) failed to comply with pleading rules by failing to respond to  
4 the First Amended Counterclaim.

5 **D. Counterclaimants Provide Prima-Facia Evidence of Their Claims and Defenses.**

6 39. At the evidentiary hearing on June 30, 2010, the Court heard testimony from  
7 Counterclaimant Erickson regarding the allegations, claims and defenses at issue in this case.

8 40. Erickson is the president of SVC and was thoroughly involved with the history  
9 and facts of this case.

10 41. Erickson testified that he had personally verified the allegations contained in the  
11 Counterclaim. More specifically, he testified that neither he nor anyone acting on his or SVC's  
12 behalf, executed the Grant Bargain Sale Deeds ("Deeds") which purportedly transferred interest  
13 in the mining claims to Belgo.

14 42. Erickson testified that the Deeds were false and fraudulent.

15 43. Counterclaimants received no payment or consideration of any kind from  
16 Counterdefendants in exchange for the mining claims.

17 44. Neither Erickson nor anyone acting on his or SVC's behalf executed the  
18 purported Claims Transfer Agreement whereby Counterclaimants ostensibly agreed to transfer  
19 their mining claims to Counterdefendants.

20 45. Erickson testified that the Claims Transfer Agreement was false and fraudulent.

21 46. The Court finds that Counterclaimants presented credible, prima-facia evidence in  
22 support of their claims for Slander of Title and requests for Declaratory Judgment and Quiet  
23 Title.

24 **E. Counterclaimants Provided Evidence that Counterdefendants  
25 Consented to a Quiet Title Judgment in Favor of Silver Viking**

26 47. During the course of the hearing on June 30, 2010, Counterclaimants introduced  
27 into the record a settlement agreement and related deeds that evidenced Counterdefendants'  
28 consent to having a quiet title judgment entered in favor of Silver Viking. Those documents are





1 in the possession of the Court and were made part of the record. Putting aside  
2 Counterdefendants' voluntary acknowledgment of the resolution of this matter, the Court  
3 nonetheless continues with the following analysis given that Counterclaimants' have not yet  
4 received the original notarized settlement documents and deeds from Counterdefendants.

5 **F. Analysis of Ribeiro factors:**

6 48. The Court finds that it is critical that all parties participate in discovery and the  
7 litigation process.

8 49. Failure to do so results in prejudice to the non-offending party, loss of discovery,  
9 and failure to adjudicate a case on the merits.

10 50. Because the Court concludes below that it is now appropriate to impose ultimate  
11 sanctions against Counterdefendants, the Court hereby sets forth its consideration of the *Ribeiro*  
12 factors:

13 First Factor – The Degree of Willfulness of the Offending Party.

14 51. The Court finds the degree of willfulness associated with Counterdefendants'  
15 continued and willful refusal to participate in discovery and to comply with this Court's orders is  
16 extreme for the following reasons:

- 17 a. The Court finds that Counterdefendants knowingly and willfully violated the  
18 Court's orders. The parties were ordered to appear at the business court's  
19 Rule 16 conference to allow the Court to, among other things, coordinate  
20 discovery, discuss settlement potential, and set hearings on dispositive  
21 hearings. Counterdefendants represented they would be available at each of  
22 the Rule 16 conferences and were offered dates to appear based on their  
23 availability. Despite the Court allowing Counterdefendants to participate in  
24 choosing the conference dates, Counterdefendants failed to appear at each of  
25 three consecutive Rule 16 conferences, spanning a course of more than two  
26 months. Thus, the Court has been unable to perform its function and progress  
27 this case due to Counterdefendants' intentional and calculated decision to not  
28 comply with the Court's orders.

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- b. Counterdefendants were ordered to appear and show cause why they should not be held in contempt and why their pleadings should not be stricken. Again, Counterdefendants failed to respond and failed to appear. Counterdefendants' refusal to comply with the Court's order was again knowing, willful, and intentional.
- c. Counterdefendants were served with interrogatories which they failed to respond to and failed to request any sort of extension.
- d. DVK's deposition was noticed for June 10, 2010, a date he represented to the Court he would be available. DVK failed to appear and failed to request his deposition be rescheduled.
- e. Counterdefendants failed to file a reply to Counterclaimants' First Amended Counterclaim. Accordingly, entry of default against Counterdefendants is warranted on that basis alone.
- f. Finally, the Court ordered Counterdefendants to appear and show cause why their pleadings should not be stricken. Again, with full knowledge that the Court intended to strike their pleadings if they failed to appear, Counterdefendants failed to respond or appear.
- g. The Court finds that Counterdefendants knowingly and willfully failed to comply with the Court's orders and knowingly and willfully failed participate in discovery.

52. The Court finds that Counterdefendants were aware of each Rule 16 conferences, were aware of their duty to respond to discovery and appear at their depositions, and were aware of the Court's Order to Show Cause hearing.

53. Counterdefendants understood the Court's repeated warnings to them, they repeatedly represented that they would comply, and they repeatedly failed to comply.

54. Counterdefendants' failure to even attempt to comply with the Court's repeated orders and discovery demonstrates recalcitrance, brazenness, and a very high degree of willful disobedience.

1            Second Factor – Extent of Prejudice to Non-Offending Party.

2            55. The Court previously carefully considered and imposed lesser sanctions in  
3 response to Counterclaimants' repeated requests that it strike Counterdefendants' pleadings. On  
4 March 26, 2010, Counterclaimants requested the case be dismissed based on Counterdefendants'  
5 failure to appear; however, the Court issued a less severe monetary sanction of \$750 to be paid to  
6 the Clark County Pro Bono Project. Additionally, the Court warned that more severe sanctions  
7 may issue for future failures to appear. On April 30, 2010, Counterclaimants again requested the  
8 Court strike Counterdefendants' pleadings. The Court declined to impose ultimate sanctions but  
9 expressly warned Counterdefendants that they were receiving one last chance to appear on June  
10 11, 2010. Counterdefendants again failed to appear at the June 11, 2010 conference.  
11 Counterdefendants' overt defiance and disregard of the Court's orders demonstrates that lesser  
12 sanctions were not effective and that anything less than the ultimate sanctions of striking their  
13 pleadings and entering judgment against them would be ineffective and unjust.

14            56. The Court finds that the normal litigation process has been halted due to  
15 Counterdefendants' unresponsiveness and that Counterclaimants have been prejudiced by the  
16 resulting interminable delay and uncertainty as to their legal rights. See Skeen v. Valley Bank of  
17 Nev., 89 Nev. 301, 303, 611 P.2d 1053, 1054 (1973). Accordingly, the Court further finds that  
18 lesser sanctions would only compound the prejudice to Counterclaimants.

19            57. The Court finds that the subject matter of this litigation concerns unique and  
20 valuable property and rights thereto. Accordingly, Counterclaimants' rights are further  
21 prejudiced by the continued cloud to the title of the property at issue. The inability to proceed  
22 with this litigation impedes pending transactions with third-parties. The prejudice imposed on  
23 Counterclaimants by Counterdefendants' intentional delays cannot be cured by the Court  
24 requiring Counterclaimants to suffer further delays associated with the scheduling of indefinitely  
25 postponed discovery, hearings and trial dates.

26            58. The Court finds that Counterdefendants' willful and deliberate failure to  
27 participate in discovery has prejudiced Counterclaimants' ability to obtain relevant and important  
28 discovery to progress the case and quiet title to the subject property.

1 59. Thus, the Court finds the prejudice to Erickson, SVC, and Church from the  
2 repeated discovery and litigation abuses of Counterdefendants is clear and substantial.

3 Third Factor – Severity of Striking of Pleadings Relative to Severity of Abuses.

4 60. Counterdefendants' litigation and discovery abuses have been so pervasive that  
5 such have completely prevented any substantive progression of this case since its initial hearing.

6 61. Counterdefendants knowingly and willfully disregarded the authority of this  
7 Court, the Nevada Rules of Civil Procedure, and the civil litigation process on numerous  
8 occasions. Counterdefendants have failed to appear at mandatory court hearings and depositions.  
9 They have failed to respond to discovery and have failed to retain significant evidence.

10 62. Counterdefendants were given several opportunities to comply with the Court's  
11 orders and to participate in the litigation process; however, they provided no indication of any  
12 inclination to reform their abusive conduct.

13 63. Counterdefendants' failure to appear and refusal to participate in the litigation and  
14 discovery process has caused this Case to stall indefinitely.

15 64. Accordingly, the Court finds that Counterdefendants' abuses sufficiently warrant  
16 the ultimate sanction of the striking of their pleadings.

17 Fourth Factor – Whether any Evidence has been Irreparably Lost:

18 65. Lost evidence can take at least two forms: (a) lost tangible evidence, such as  
19 destroyed documents; and (b) lost intangible evidence, such as lost testimony, due to faded  
20 memories, death of a witness, or inability to locate a witness.

21 66. In the present case, Counterclaimants alleged that DVK, on his own behalf and on  
22 behalf of the Counterdefendant entities, used computer software to manipulate the signature  
23 pages from genuine documents and place them on fraudulent Deeds and settlement agreements.  
24 Accordingly, Counterclaimants requested to review all computers and/or hard drives used by the  
25 Counterdefendants throughout the relevant time period. Counterdefendants responded that all  
26 business by and between Counterclaimants and Counterdefendants was conducted on a single  
27 laptop which "blew up" and that the "files on the hard drive were unrecoverable."  
28



1           67.     The Court further inquired into the status of the laptop. DVK again represented  
2 he had conducted all business relevant to the claims at issue herein on his laptop, that he had not  
3 backed his hard drive up, and that all data on his laptop was irretrievably lost. DVK represented  
4 that he had taken the laptop to Relvate IT, a computer repair shop in Toronto, Canada. See  
5 4/30/10 Hr'g Tr.

6           68.     The Court instructed DVK to provide the contact information for Relvate IT to  
7 Counterclaimants by May 5, 2010. See id. DVK failed to provide Counterclaimants with the  
8 information as instructed by the Court. Counterclaimants have been unable to locate any contact  
9 information for Relvate IT in Toronto, Canada.

10          69.     The Court finds that the loss and destruction of Counterdefendants' laptop, the  
11 sole source of business evidence, having been irreparably lost and not preserved is concerning  
12 and has prejudiced Counterclaimants' ability to prove the fraudulent nature of the documents  
13 they claim are fraudulent.

14                   *Fifth Factor – The Feasibility and Fairness of Alternative, Less Sever Sanctions.*

15          70.     The Court finds that imposing anything less than ultimate sanctions would be  
16 neither fair nor feasible.

17          71.     The Court already imposed alternative, less severe sanctions throughout the  
18 history of Counterdefendants' discovery and litigation abuses. Because Counterdefendants  
19 failed to even attempt to comply with any of the multiple second chances they have been  
20 provided, the Court has no reason to believe that Counterdefendants will begin to comply if  
21 given additional chances.

22          72.     This demonstrated lack of respect for the Court's orders causes the Court to  
23 conclude and find that anything less than ultimate sanctions would merely reward and embolden  
24 Counterdefendants and thereby undermine the integrity of the judicial system, all to the further  
25 prejudice of Counterclaimants.

26          73.     Further, the Court is mindful of its prior warnings to Counterdefendants advising  
27 that subsequent failure to appear would result in escalating sanctions. After Counterdefendants  
28 had failed to appear on several occasions and failed to participate in discovery in good faith, the



1 Court ordered Counterdefendants to appear and show cause why their pleadings should not be  
2 stricken. However, Counterdefendants again failed to appear and failed to provide the Court  
3 with any reason why their pleadings should not be stricken. Accordingly, imposing alternative,  
4 lesser sanctions again would be unfair and unfeasible under the circumstances.

5 Sixth Factor – The Policy Favoring Adjudication on the Merits.

6 74. The Court acknowledges that Nevada has a sound policy of resolving matters on  
7 their merits. The Court concludes, however, that the policy of resolving matters on their merits  
8 can be outweighed at times by other considerations.

9 75. The Court finds that the policy of resolving matters on their merits cannot be  
10 accomplished when parties knowingly and willfully refuse to participate in the litigation process.

11 76. The Court finds that Counterdefendants' litigation and discovery abuses have  
12 been so pervasive so as to prevent this case from being resolved on its merits.  
13 Counterdefendants have repeatedly represented they would comply with the Court's orders and  
14 have repeatedly failed to do so. Indeed, Counterdefendants have provided no indication that that  
15 their behavior will change in the future.

16 77. Counterdefendants appear to have little interest in obtaining adjudication on the  
17 merits, and this Court will not act to protect an interest which they themselves appear to care  
18 little about. Thus, the Court finds that Nevada's policy of favoring adjudication on the merits  
19 cannot be realized in this case and is outweighed by the circumstances herein.

20 Seventh Factor – Whether Sanctions Unfairly Operate to Penalize a Party for the  
21 Misconduct of its Attorney.

22 78. Counterdefendants were represented by counsel until June 10, 2010, when this  
23 Court granted counsel's motion to withdraw. Counterdefendants were not represented by any  
24 counsel past that date.

25 79. The Court finds that Counterdefendants' former counsel represented its clients  
26 competently, appeared at the required hearings, and attempted to participate in discovery.

27 80. Counterdefendants' failure to communicate with their former counsel and  
28 participate in this litigation was due to their own misconduct, not that of their former counsel.





1 81. Therefore, the Court finds that imposing ultimate sanctions will not penalize  
2 Counterdefendants for the conduct of their attorney.

3 *Eighth Factor – The Need to Deter Both the Parties and Future Litigants from Similar*  
4 *Abuses.*

5 82. The Court finds that Counterdefendants have demonstrated themselves to be  
6 recalcitrant litigants.

7 83. The Court has provided repeated opportunities for Counterdefendants to comply  
8 with its orders.

9 84. Each opportunity has been knowingly flaunted and ignored.

10 85. Even if Counterdefendants were to begin to comply with future discovery orders  
11 entered in this case, “other parties to other lawsuits would feel freer than we think Rule 37  
12 contemplates they should feel to flout other discovery orders of other courts.” See Nat’l Hockey  
13 League v. Metro. Hockey Club, Inc., 427 U.S. 639, 643 (1976).

14 86. Counterdefendants failed to appear or otherwise respond when ordered to show  
15 cause and failed to provide any testimony contrary to the foregoing findings.

16 87. The Court finds that Counterdefendants would not fully comply with the litigation  
17 and discovery process if given additional opportunities.

18 88. The Court concludes and finds, under the circumstances presented here, that  
19 anything less than ultimate sanctions would only embolden Counterdefendants and provide an  
20 excuse for other litigants to engage in similarly abusive conduct.

21 89. Any of the foregoing Findings of Fact which constitute a conclusion of law shall  
22 be deemed a Conclusion of Law.

23 **CONCLUSIONS OF LAW**

24 1. The Court notes it has reviewed Counterclaimants’ Motion for Order to Show  
25 Cause and concludes that it is meritorious.

26 2. The Court has given thoughtful and thorough consideration to all the pertinent  
27 factors affecting the Court’s discretion to impose ultimate sanctions against Counterdefendants,  
28 including all factors announced in Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 787 P.2d





1 777 (1990), as well as the factors set forth in Foster v. Dingwall, 2010 WL 679069 (Nev. 2010).

2 3. The Court concludes that Counterdefendants' actions and abuses in this case  
3 clearly warrant the presumption that their claims and defenses are meritless.

4 4. The prejudice to Counterclaimants through the repeated abuses is clear.

5 5. Based on the foregoing, the Court concludes that striking Counterdefendants'  
6 pleadings is an appropriate sanction pursuant to NRCP 37, EDCR, 7.60(b) and this Court's  
7 inherent powers.

8 6. Any of the foregoing Conclusions of Law which constitute a finding of fact shall  
9 be deemed a Finding of Fact.

10 **ORDER**

- 11 1) The relief requested in the Motion for OSC is hereby **GRANTED** in part;
- 12 2) All pleadings filed by Belgo-Nevada, LTD, De Sonnevile Gold, LLC, De Sonnevile  
13 Mining, LLC and Dennis Van Kerrebroeck are hereby **stricken**.
- 14 3) Default judgment in favor of Silver Viking and against Plaintiffs/Counterdefendants  
15 is hereby granted.
- 16 4) The Judgment and Order Quieting Title to Mining Claims in Favor of  
17 Counterclaimant Silver Viking in the form attached hereto as Ex. 1 is being separately  
18 executed by the Court. The respective/relevant County Recorder's Offices are hereby  
19 Ordered to immediately record such Judgment.

20 Dated this 11 day of July, 2010.

*August*  
*Ed*

*Elizabeth Goff Gonzalez*  
DISTRICT COURT JUDGE

21 Submitted by:  
22  
23 SANTORO, DRIGGS, WALCH,  
24 KEARNEY, HOLLEY & THOMPSON

For ELIZABETH GOFF GONZALEZ *EG*

25  
26 JAMES E. WHITMIRE, ESQ. / NBN 6533  
27 400 South Fourth Street, Third Floor  
28 Las Vegas, Nevada 89101  
*Attorneys for Defendants/Counterclaimants*

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**EXHIBIT "1"**



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SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON



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**JUDG**  
JAMES E. WHITMIRE, ESQ.  
Nevada Bar No. 6533  
[jwhitmre@nevadafirm.com](mailto:jwhitmre@nevadafirm.com)  
SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: 702/791-0308  
Facsimile: 702/791-1912

*Attorneys for Defendants / Counterclaimants*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

BELGO-NEVADA LTD., a Nevada corporation;  
DE SONNEVILLE GOLD LLC, a Delaware  
limited liability company; and DE  
SONNEVILLE MINING LLC, a Delaware  
limited liability company,

Case No.: A-10-608861-B  
Dept. No.: XI

Plaintiffs,

v.

SILVER VIKING CORPORATION, a Nevada  
corporation; EINAR C. ERICKSON, a Utah  
resident; WARREN M. CHURCH, a Utah  
Resident; DOES 1 through X, inclusive; and  
ROE CORPORATIONS I through X, inclusive,

Defendants.

ALL RELATED CLAIMS

**JUDGMENT AND ORDER QUIETING TITLE TO MINING CLAIMS IN FAVOR  
OF COUNTERCLAIMANT SILVER VIKING CORPORATION**

The above-entitled matter having come before this Court, this Court being fully advised,  
this Court having entered its FINDINGS OF FACT AND CONCLUSIONS OF LAW after an  
evidentiary hearing, and this Court having stricken the pleadings and entered default of  
Plaintiffs/Counterdefendants (BELGO-NEVADA LTD. ("Belgo"), DE SONNEVILLE GOLD  
LLC ("DSG"), DE SONNEVILLE MINING LLC ("DSM") and DENNIS VAN  
KERREBROECK ("DVK" and collectively with Belgo, DSG and DSM "Counterdefendants"), it

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is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. Over the course of several decades, EINAR C. ERICKSON ("Erickson") and SILVER VIKING CORPORATION ("SVC" and collectively with Erickson, "Silver Viking") acquired rights, title and interest in certain mining claims throughout Nevada.

2. In the above-captioned case, Silver Viking sought, *inter alia*, to quiet title to certain Patented and Unpatented Lode Mining Claims in Eureka County, Nye County, White Pine County, and Lincoln County, Nevada, as further identified and described in Exhibit "A" attached hereto and incorporated herein ("Mining Claims").

3. The quiet title relief sought by Silver Viking was filed after Silver Viking had recorded Notices & Affidavits of Fraudulent Deed in response to certain actions that had been previously taken by one or more of the Counterdefendants.

4. More particularly, on or about January 27, 2009, Belgo recorded documents to ostensibly transfer from Silver Viking to Belgo all of Silver Viking's right, title, and interest in and to those portions of the Mining Claims constituting: (i) patented mining claims situated in Eureka County, Nevada (the "Eureka Patented Claims") and, (ii) unpatented mining claims situated in Eureka County, Nevada (the "Eureka Unpatented Claims"). The documents relating to the Eureka Patented Claims were recorded with the County Recorder for Eureka County, Nevada, as Document No. 0213062 in Book No. 0485, Page No. 0102. The documents relating to the Eureka Unpatented Claims were recorded with the County Recorder for Eureka County, Nevada, at Document No. 0213061 in Book No. 0485, Page No. 0098. Silver Viking has alleged that the above-referenced ostensible transfer was fraudulent.

5. Belgo later recorded documents to ostensibly transfer from Silver Viking to Belgo all of Silver Viking's right, title, and interest in and to those portions of the Mining Claims situated in Nye County, Lincoln County, and White Pine County, Nevada (the "Nye County Mining Claims"). The documents relating to the Nye County Mining Claims were recorded with the County Recorder for Nye County, Nevada, as Document No. 731191. Silver Viking has alleged that the above-referenced ostensible transfer was fraudulent.



1           6.       On or about December 30, 2009, Belgo recorded documents to ostensibly transfer  
2 title in the Eureka Patented Claims to DSG. The documents were recorded with the County  
3 Recorder for Eureka County, Nevada as Document No. 214387 in Book No. 0496, Page Nos.  
4 324-327. Silver Viking has alleged that the above-referenced ostensible transfer was fraudulent.

5           7.       On or about December 30, 2009, Belgo recorded documents to ostensibly transfer  
6 title to the Eureka Unpatented Claims to DSG. The documents were recorded with the County  
7 Recorder for Eureka County, Nevada as Document No. 214386 in Book No. 0485, Page Nos.  
8 320-323. Silver Viking has alleged that the above-referenced ostensible transfer was fraudulent.

9           8.       On or about June 30, 2010, Counterdefendants were ordered to appear and show  
10 cause why their pleadings should not be stricken.

11           9.       Counterdefendants and each of them failed to appear and the Court ordered the  
12 pleadings of Counterdefendants to be stricken and directed the clerk of the court to enter default  
13 against Counterdefendants.

14           10.      The Court heard and accepted testimony from Erickson that Counterdefendants  
15 had recorded forged Grant Bargain Sale Deeds, or Grant Bargain Sale Deeds containing false  
16 signatures.

17           11.      The Court found Erickson's testimony to be credible and has issued this judgment  
18 in favor of Counterclaimants.

19           12.      Accordingly, title to the Mining Claims is hereby quieted in favor of Silver  
20 Viking Corporation, a Nevada limited liability company.

21           13.      Silver Viking is hereby adjudged to be the owner of the same right, title, and  
22 interest, in and to the Mining Claims it possessed prior to the recording of any Deeds by  
23 Plaintiffs/Counterdefendants Belgo, DSG, DSM and DVK relating to the Mining Claims.

24           14.      Plaintiffs/Counterdefendants Belgo, DSG, DSM and DVK (and any persons  
25 purporting to take any interest in the Mining Claims by or through them) have no right, title, or  
26 interest in or to the Mining Claims by virtue of the purported Grant Bargain Sale Deeds, Claims  
27 Transfer Agreement, Quitclaim Deeds or otherwise and are hereby enjoined from taking any  
28 action inconsistent with Silver Viking's rights set forth herein.



1 15. A certified copy of this Judgment and Order shall be recorded with the County  
2 Recorder's Offices in Eureka County, Nye County, White Pine County, and Lincoln  
3 County, Nevada to document and give notice that SILVER VIKING CORPORATION is the  
4 rightful owner of the Mining Claims identified in Exhibit A.

5 **IT IS SO ORDERED**

6 Dated this \_\_\_ day of July, 2010.

7  
8  
9 DISTRICT COURT JUDGE

10 Submitted by:

11 SANTORO, DRIGGS, WALCH,  
12 KEARNEY, HOLLEY & THOMPSON

13  
14 JAMES E. WHITMIRE, ESQ.  
15 Nevada Bar No. 6533  
16 400 South Fourth Street, Third Floor  
17 Las Vegas, Nevada 89101

18 *Attorneys for Defendants / Counterclaimants*

SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON

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**EXHIBIT "A"**

**Exhibit A  
To Quiet Title Judgment  
Legal Description**

**PATENTED LODE MINING CLAIMS**

The following patented lode and mill site claims are located in Sections 3, Township 18 North, Range 53 East, and Sections 13, 14, 27, 29, 30, 31, 32, 33 and 34, Township 19 North, Range 53 East, M.D.B.&M., in the County of Eureka, State of Nevada.

<u>Claim Name and Number</u>	<u>Mineral Survey Number</u>
Antelope	215
Avon - 85%	243
Apache	178
Banner	156
Cloud	194
Clyde	129
Compass - 9/16	302
Daylesford	264A
Dead Broke	191
Delaware	157
Diamond	221
East Oakland	186
Eldorado No. 2 - 1/8	140
Eureka Tunnel - 3/16	No Survey
Excelsior & Carlo Zeno	142
Excelsior	181
Fanny & Frankie Scott	198
Fourth of July	82
Gas Light	145
General Washington	128A
Goban & Sinnor	237
Gore	162
Hawkeye	223
Hibernia	311
Hugenot	115
Ida	199
Kentucky No. 1	236
Kentucky No. 3	238
Kit Carson	163
Krao	319

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Lantern	183
Laral - 50%	188
Lena - 9/16	303
Lizzie L.	224
Madrid	166
Manhattan - 62 1/2	179
May Day Queen	144
McNaughton	171
Metamoras	127A
Miland	132&135
Miners' Dream	233
Morris	169A
Mountain Boy	234
Mountain Queen	235
Napa	320
New Years	193
Old Put	245A
Oversight	282
Ozark	158
Pioneer - 75%	177
Republic	296
Sage Brush	185
Silver Connor 50%	187
San Jose	182
Star of Eureka	312
Sunset - 1/8	205
Welch King	184
Whip Poor Will	168
Williams	170
Young Mable	263

**PATENTED MILL SITES**

**Claim Name and Number**

**Mineral Survey Number**

Metamoras	127B
Old Put	245B
Daylesford	264B

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## UNPATENTED LODE MINING CLAIMS

The following unpatented lode and mill site claims are located in Sections 2, 3 and 4, Township 18 North, Range 53 East, and Sections 27, 28, 33 and 34, Township 19 North, Range 53 East, M.D.B.&M., in the County of Eureka, State of Nevada.

<u>Claim Name</u>	<u>BLM Serial Number</u>
August	NMC 798897
August #1	NMC 798989
August #9	NMC 798903
Baltic	NMC 798864
Grover Cleveland	NMC 798869
Forth of July Fraction	NMC 798863
Hillside	NMC 798872
Hillside 3	NMC 798875
Hillside 4	NMC 798876
Hillside 6	NMC 798878
Huckleberry	NMC 789862
Leviathan	NMC 798870
Nevada	NMC 798867
NorthernLight	NMC 798866
Omega 1	NMC 798889
Omega 2	NMC 798890
Omega 3	NMC 798891
Omega 4	NMC 798892
Omega 5	NMC 798893
Omega 6	NMC 798894
Omega 7	NMC 798895
Omega 8	NMC 798896
Ophir 1	NMC 798905
Ophir 3	NMC 798907
Ophir 4	NMC 798908
Parnell	NMC 798871
PMJV 3	NMC 817579
PMJV 4	NMC 817580
PMJV 5	NMC 817581
PMJV 6	NMC 817582
PMJV 10	NMC 817586
PMJV 14	NMC 817590
PMJV 16	NMC 817592

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PMJV 17  
 Utah  
 Wabash  
 Wabash 1  
 Wabash 2  
 Wabash 3  
 Wabash 4  
 Wabash 5  
 Wabash 6  
 Wabash 8  
 Wabash Fraction  
 Silverado

NMC 817593  
 NMC 798868  
 NMC 798880  
 NMC 798881  
 NMC 798882  
 NMC 798883  
 NMC 798884  
 NMC 798885  
 NMC 798886  
 NMC 798888  
 NMC 798879  
 NMC 197574

**UNPATENTED LODGE MINING CLAIMS**

<u>Serial No.</u>	<u>Claim Name/Number</u>	<u>County</u>	<u>Mr.</u>	<u>Twn</u>	<u>Rng</u>	<u>Sec</u>
NMC 588055	Reveille 701	NYE	21	2N	51.5E	1
NMC 588056	Reveille 702	NYE	21	2N	51.5E	1
NMC 588058	Reveille 704	NYE	21	2N	51.5E	1
NMC 11005	Reveille # 368	NYE	21	2N	51.5E	14
NMC 11006	Reveille # 369	NYE	21	2N	51.5E	14
NMC 4886	Willow Creek # 20	NYE	21	4N	56E	8
NMC 4886	Willow Creek # 20	NYE	21	4N	56E	17
NMC 19491	Golden Arrow # 1	NYE	21	2N	48E	32
NMC 19492	Golden Arrow # 2	NYE	21	2N	48E	32
NMC 126854	Golden Arrow # 3	NYE	21	2N	48E	29
NMC 126854	Golden Arrow # 3	NYE	21	2N	48E	32
NMC 19496	Golden Arrow # 6	NYE	21	2N	48E	32
NMC 19498	Golden Arrow # 8	NYE	21	2N	48E	28
NMC 19498	Golden Arrow # 8	NYE	21	2N	48E	29
NMC 19499	Golden Arrow # 9	NYE	21	2N	48E	32
NMC 19499	Golden Arrow # 9	NYE	21	2N	48E	33
NMC 19500	Golden Arrow # 10	NYE	21	2N	48E	29
NMC 19500	Golden Arrow # 10	NYE	21	2N	48E	32
NMC 19501	Golden Arrow # 11	NYE	21	2N	48E	29
NMC 19501	Golden Arrow # 11	NYE	21	2N	48E	32
NMC 126855	Golden Arrow # 12	NYE	21	2N	48E	28
NMC 126855	Golden Arrow # 12	NYE	21	2N	48E	29

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NMC 126855	Golden Arrow # 12	NYE	21	2N	48E	32
NMC 126855	Golden Arrow # 12	NYE	21	2N	48E	33
NMC 126856	Golden Arrow # 13	NYE	21	2N	48E	28
NMC 126856	Golden Arrow # 13	NYE	21	2N	48E	33
NMC 19504	Golden Arrow # 14	NYE	21	2N	48E	28
NMC 19506	Golden Arrow # 16	NYE	21	2N	48E	33
NMC 19507	Golden Arrow # 17	NYE	21	2N	48E	33
NMC 19508	Golden Arrow # 18	NYE	21	2N	48E	32
NMC 19516	Golden Arrow # 26	NYE	21	2N	48E	29
NMC 19516	Golden Arrow # 26	NYE	21	2N	48E	32
NMC 19518	Golden Arrow # 28	NYE	21	2N	48E	29
NMC 19518	Golden Arrow # 28	NYE	21	2N	48E	32
NMC 19526	Golden Arrow # 36	NYE	21	1N	48E	5
NMC 19526	Golden Arrow # 36	NYE	21	2N	48E	32
NMC 19527	Golden Arrow # 37	NYE	21	1N	48E	5
NMC 19527	Golden Arrow # 37	NYE	21	2N	48E	32
NMC 19528	Golden Arrow # 38	NYE	21	1N	48E	5
NMC 19528	Golden Arrow # 38	NYE	21	2N	48E	32
NMC 19529	Golden Arrow # 39	NYE	21	1N	48E	5
NMC 19529	Golden Arrow # 39	NYE	21	2N	48E	32
NMC 19530	Golden Arrow # 40	NYE	21	1N	48E	4
NMC 19530	Golden Arrow # 40	NYE	21	1N	48E	5
NMC 19530	Golden Arrow # 40	NYE	21	2N	48E	32
NMC 19530	Golden Arrow # 40	NYE	21	2N	48E	33
NMC 19531	Golden Arrow # 41	NYE	21	1N	48E	4
NMC 19531	Golden Arrow # 41	NYE	21	2N	48E	33
NMC 19532	Golden Arrow # 42	NYE	21	2N	48E	33
NMC 19533	Golden Arrow # 43	NYE	21	2N	48E	33
NMC 19534	Golden Arrow # 44	NYE	21	2N	48E	33
NMC 19543	Steptoe # 1	NYE	21	2N	48E	32
NMC 19544	Steptoe # 2	NYE	21	2N	48E	32
NMC 19544	Steptoe # 2	NYE	21	2N	48E	33
NMC 19545	Aero # 1	NYE	21	2N	48E	32
NMC 19546	Aero # 2	NYE	21	2N	48E	32
NMC 19454	Keystone # 98	NYE	21	7N	49E	25
NMC 126859	Keystone # 232	NYE	21	7N	50E	19
NMC 159860	Keystone # 230	NYE	21	7N	50E	19
NMC 156041	Keystone # 209	NYE	21	7N	50E	19
NMC 156041	Keystone # 209	NYE	21	7N	50E	30
NMC 156047	Keystone # 215	NYE	21	7N	50E	25
NMC 156048	Keystone # 216	NYE	21	7N	50E	25

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NMC 156049	Keystone # 217	NYE	21	7N	50E	25
NMC 156059	Keystone # 228	NYE	21	7N	50E	19
NMC 156060	Keystone # 229	NYE	21	7N	50E	19
NMC 156061	Keystone # 231	NYE	21	7N	50E	19
NMC 156065	Keystone # 236	NYE	21	7N	50E	18
NMC 156065	Keystone # 236	NYE	21	7N	50E	19
NMC 156066	Keystone # 237	NYE	21	7N	50E	18
NMC 156066	Keystone # 237	NYE	21	7N	50E	19
NMC 423607	Fraction # 1	NYE	21	7N	50E	20
NMC 423608	Fraction # 2	NYE	21	7N	50E	20
NMC 423609	Fraction # 3	NYE	21	7N	50E	20
NMC 423609	Fraction # 3	NYE	21	7N	50E	29
NMC 423610	Fraction # 4	NYE	21	7N	50E	19
NMC 423610	Fraction # 4	NYE	21	7N	50E	20
NMC 423610	Fraction # 4	NYE	21	7N	50E	29
NMC 423610	Fraction # 4	NYE	21	7N	50E	30
NMC 423611	Fraction # 5	NYE	21	7N	50E	19
NMC 423611	Fraction # 5	NYE	21	7N	50E	20
NMC 423612	Fraction # 6	NYE	21	7N	50E	19
NMC 423613	Fraction # 7	NYE	21	7N	50E	19
NMC 423614	Fraction # 8	NYE	21	7N	50E	19
NMC 423615	Fraction # 9	NYE	21	7N	50E	19
NMC 423616	Fraction # 10	NYE	21	7N	50E	19
NMC 423617	Fraction # 11	NYE	21	7N	50E	19
NMC 423618	Fraction # 12	NYE	21	7N	50E	19
NMC 423619	Fraction # 13	NYE	21	7N	50E	19
NMC 423620	Fraction # 14	NYE	21	7N	50E	19
NMC 423620	Fraction # 14	NYE	21	7N	50E	20
NMC 423621	Fraction # 15	NYE	21	7N	50E	20
NMC 574133	Willow Creek # 222	LINCOLN	21	5S	64E	28
NMC 574134	Willow Creek # 223	LINCOLN	21	5S	64E	28
NMC 574135	Willow Creek # 224	LINCOLN	21	1N	57E	29
NMC 574136	Willow Creek # 225	LINCOLN	21	1N	57E	29
NMC 117802	Grand # 1	WHITE PINE	21	16N	62E	6
NMC 117803	Grand # 2	WHITE PINE	21	16N	62E	6
NMC 117804	Grand # 3	WHITE PINE	21	16N	62E	6
NMC 117805	Grand # 4	WHITE PINE	21	16N	62E	6
NMC 117810	Grand # 9	WHITE PINE	21	17N	62E	31

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OF THE ORIGINAL ON FILE

*Atina L. Johnson*

CLERK OF THE COURT

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