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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re: ELEVATION GOLD MINING CORPORATION et al., Debtors in a Foreign Proceeding.	Chapter: 15 Jointly Administered Case Nos. 2:24-bk-06359-EPB 2:24-bk-06364-DPC 2:24-bk-06367-BKM 2:24-bk-06368-MCW 2:24-bk-06370-EPB 2:24-bk-06371-DPC
SANDSTORM GOLD LTD., a successor by vertical amalgamation to Nomad Royalty Company Ltd., a Canadian business corporation, Plaintiff, v. ELEVATION GOLD MINING CORPORATION, a British Columbia company; ECLIPSE GOLD MINING CORPORATION, a British Columbia company; GOLDEN VERTEX CORP., an Arizona business corporation, Defendants.	Adv. No. 2:24-ap-00252-EPB **DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Federal Rule of Bankruptcy Procedure 7056, incorporating Federal Rule of Civil Procedure 56, Defendants Elevation Gold Mining Corporation, Eclipse Gold Mining Corporation, and Golden Vertex Corp. (collectively, "Defendants") by and through

undersigned counsel, move this Court for entry of summary judgment on Sandstorm Gold Ltd.'s ("Sandstorm") declaratory relief claim as well as its claims for conversion and constructive trust. As set forth herein, each of these claims fail as a matter of law.

First, as to the declaratory relief claim, the Letter Agreement (defined below) does not create or convey any interest in Defendants' real property. As detailed herein, it is undisputed that the unambiguous Letter Agreement was entered into on March 4, 2004, and provided for Sandstorm to receive between a 0.5% to 3% Net Smelter Return or "Production Royalty," an accrued royalty. Pursuant to Arizona law, an accrued royalty is an interest in personal property, not real property. Defendants are entitled to summary judgment against Sandstorm for declaratory judgment because Sandstorm does not have an interest in real property of the Moss Mine.

Second, Sandstorm's claims for conversion and a constructive trust likewise fail as a matter of law. Sandstorm is not entitled to any specifically identified personal property, and any obligation due to Sandstorm can be resolved through an adequate remedy at law: monetary damages, which is exactly what Sandstorm seeks. Further, Sandstorm is not capable of tracing any proceeds such that a constructive trust could be imposed.

This Motion is supported by the following memorandum of points and authorities and the concurrently filed Statement of Facts in Support of Motion for Partial Summary Judgment ("SOF").

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND

GVC owns the Moss Mine in Mohave County, Arizona, which is comprised of certain patented (fee owned) and unpatented mining claims and state land mineral exploration permits. SOF ¶ 4. On March 4, 2004, Patriot Gold Corp. ("Patriot Gold") entered into the "Letter Agreement" with MinQuest, Inc. ("MinQuest"). SOF ¶ 7. The Letter Agreement relates to certain patented and unpatented lode claims and specified areas of interest at the Moss Mine (hereafter, the "Property"). SOF ¶ 10.

A. Assignments of the Letter Agreement

On May 25, 2016, Patriot Gold assigned its rights and obligations under the Letter Agreement to Golden Vertex Company ("GVC"). SOF ¶ 11. On the other hand, on July 17, 2017, MinQuest assigned its rights and obligations under the Letter Agreement to Great Basin Resources, Inc. SOF ¶ 12. Subsequently, Great Basin Resources, Inc. assigned its rights and obligations under the Letter Agreement to Great Basin Royalty, LLC. SOF ¶ 13. Great Basin Royalty, LLC then assigned its rights and obligations under the Letter Agreement to Valkyrie Royalty, Inc. SOF ¶ 14. Relying on Sandstorms' assertions on January 1, 2022, Valkyrie Royalty, Inc. became Nomad Royalty, Ltd. SOF ¶ 15. Pursuant to *Ex Parte Motion to Amend Case Caption and Notice of Name Change*, Nomad Royalty, Ltd. became Sandstorm by vertical amalgamation. SOF ¶ 16.

B. Contents of the Letter Agreement

The Letter Agreement provided that it would be binding until such time as MinQuest and Patriot Gold entered into a "formal and comprehensive agreement." SOF ¶ 8. No such agreement was entered into by the parties. SOF ¶ 9.

Pursuant to the "Production Royalties" section of the Letter Agreement, Sandstorm purportedly holds a production royalty ranging from 0.5% to 3.0% of the Net Smelter Return ("NSR") on production derived from various locations within the Moss Mine. SOF ¶ 17. The Letter Agreement unambiguously calls these interests "production royalties." SOF ¶ 17. The Letter Agreement contains no language that it creates a real property interest and does not convey any real property interest to Sandstorm.

Further, the Letter Agreement does not state it is binding on successors and assigns. SOF ¶ 18. The Letter Agreement provides for a term of "20 years with automatic extensions so long as Patriot Gold holds all or portions of the 'Property'" ("Term"). SOF ¶ 19. And the Letter Agreement states that it is assignable "freely by either party so long as Assignee accepts terms and conditions of the Lease in writing."[1] SOF ¶ 20.

[1] The parties to the Letter Agreement sometimes referred to the Letter Agreement as the "Lease" in the Letter Agreement.

There is no obligation for GVC to pay the annual maintenance fees for the unpatented claims that comprise the Property. SOF ¶ 21. Further, there is no requirement for GVC to report to anyone in any form or fashion or to notice anyone of any material events, including a sale, relating to the Property. SOF ¶ 22. There are no covenants of production, no indemnity provisions of any type or kind, and no security provisions. SOF ¶ 23. Also lacking are any requirements to hold proceeds from the sale of minerals in trust or to otherwise segregate any funds for the benefit of Sandstorm. SOF ¶ 24.

Sandstorm has admitted that the Letter Agreement is unambiguous for purposes of its declaratory relief claim. SOF ¶ 25. It seeks declaratory relief stating it holds a royalty that constitutes a real property interest. SOF ¶ 4.

C. Bankruptcy Procedural History

The Defendants obtained protection from their creditors in proceedings (the "Canadian Proceeding") commenced under Canada's Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the "CCAA"), pending before the Supreme Court of British Columbia (the "Canadian Court") as Action No. S245121. Subsequently, a Chapter 15 case was commenced ancillary to the Canadian Proceeding. Additionally, this Court entered the order setting forth that (i) the Canadian Proceeding is recognized as a "foreign main proceeding" under 11 U.S.C. § 1517; and (ii) giving full force and effect in the United States to the Initial Order of the Canadian Court made by Justice Fitzpatrick dated August 1, 2024, and the Amended and Restated Initial Order dated August 12, 2024 [DE 49][2]. SOF ¶ 3.

Sandstorm filed this instant adversary proceeding in the Chapter 15 bankruptcy, asserting a claim for default judgment regarding the royalty interest in the Moss Mine, breach of contract, breach of implied covenant of good faith and fair dealing, conversion and constructive trust, aiding and abetting against unnamed defendants, accounting against the Defendants, declaratory judgment regarding the royalty amount due under the agreement, and injunctive relief. [D.E. 34]. SOF ¶ 4. This Motion seeks summary judgment

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related to the asserted claim for declaratory relief regarding the royalty interest in the Moss Mine and the claims for conversion and constructive trust.

II. LEGAL STANDARD

Federal Rule of Civil Procedure ("Civil Rule") 56(a), as applicable to this proceeding under Bankruptcy Rules 7056 and 9014(c), provides: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *See* Fed. R. Civ. P. 56(a); *see also In re Linton*, 631 B.R. 882, 892–93 (B.A.P. 9th Cir. 2021). On summary judgment, the movant must show "that there is no genuine issue of material fact." *In re Healthcentral.com*, 504 F.3d 775, 788 (9th Cir. 2007). "If this burden has been met, we must then assess whether the non-moving party has come forward with its own significant and probative evidence showing a genuine issue of material fact as to the relevant claims or defense." *Id.* Furthermore, "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). An unambiguous contract does not present an issue of fact because "[t]he construction of a contract is a question of law where the terms of the agreement are clear and unambiguous." *In re Bataa/Kierland LLC*, 496 B.R. 183, 191 (D. Ariz. 2013).

III. ARGUMENT

Sandstorm's declaratory relief claim and claims for conversion and constructive trust are legally defective.

- The declaratory relief claim fails because the Letter Agreement is unambiguous and does not support that Sandstorm's royalty is a real property interest.
- The claims for conversion and constructive trust fail because they are based on allegations for simple breach of contract for failure to make payments, which are remediable by monetary damages and it is not possible to trace any proceeds.

Defendants are entitled to summary judgment on these claims.

A. Royalty Interests in Arizona

There are two types of royalties: accrued and unaccrued. An accrued royalty is a personal property interest while an unaccrued royalty is only a real property interest when the parties intend to create such an interest. *Cheapside Minerals, Ltd. v. Devon Energy Prod. Co., L.P.*, 94 F.4th 492, 498 (5th Cir. 2024) ("[A]ccrued royalty interests are personal property, . . . as is the right to payment for severed minerals." (citation omitted)). *United States v. Noble*, 237 U.S. 74, 80 (1915) (accrued royalites are personal property).

Arizona law governs Sandstorm's interests under the Letter Agreement. "Property interests are created and defined by state law," so state law governs even in bankruptcy proceedings. *In re Rega Props., Ltd.*, 894 F.2d 1136, 1139 (9th Cir. 1990). "[S]tate law should generally be used to decide issues regarding property interests—applies equally to contract cases, which would be governed by state law absent the bankruptcy." *Id.*

The Defendants are entitled to summary judgment on Sandstorm's declaratory relief claim because Sandstorm's royalty is not a real property interest under Arizona law. The right to an accrued royalty (i.e., a share of the proceeds from the sale of the minerals produced) is a personal property interest, and the right to unaccrued royalties (minerals in the ground) can only "be an interest in real property when the parties so intend." *See Paloma Inv. Ltd. P'ship v. Jenkins*, 978 P.2d 110, 115 (Ariz. Ct. App. 1998); *see also Cheapside Mins., Ltd. v. Devon Energy Prod. Co., L.P.*, 94 F.4th 492, 498 (5th Cir. 2024) ("[A]ccrued royalty interests are personal property, . . . as is the right to payment for severed minerals." (citation omitted)). "In order to determine what the parties intended, we first consider the plain meaning of the words in the context of the contract as a whole." *Grosvenor Holdings, L.C. v. Figueroa*, 218 P.3d 1045, 1050 (App. 2009).

"Where the intent of the parties is expressed in clear and unambiguous language, there is no need or room for construction or interpretation and a court may not resort thereto." *Id.* (citation omitted); *N. Ariz. Gas Serv., Inc. v. Petrolane Transp., Inc.*, 702 P.2d 696, 701 (Ariz. Ct. App. 1984) (applying contract law to dispute related to royalty). "A general principle of contract law is that when parties bind themselves by a lawful contract,

the terms of which are clear and unambiguous, a court must give effect to the contract as written." *Grosvenor*, 218 P.3d at 1050 (citation omitted).

"Whether a contract is reasonably susceptible to more than one interpretation is a question of law," resolvable on summary judgment. *Id.* Sandstorm bears "the burden of justifying [its] request" for declaratory relief. *Ivey v. Turning Point Homes & Dev., Inc.*, No. 1 CA-CV 23-0021, 2023 WL 7544844, at *5, ¶ 30 (Ariz. Ct. App. Nov. 14, 2023). Here, the Letter Agreement is not "reasonably susceptible" to the reading that Sandstorm's "production royalty" is a real property interest. There is no provision in the Letter Agreement that supports Sandstorm's reading. Defendants are entitled to judgment as a matter of law on Sandstorm's declaratory relief claim.

1. The Letter Agreement is an accrued royalty that creates only a personal property interest.

The parties unambiguously agreed to "production royalties," i.e., an interest in severed minerals that constitute personal property interests in the form of accrued royalties. SOF ¶ 17. A right to payment that "arises only after severance of the product from the realty" is an accrued royalty. *Hardy v. Greathouse*, 94 N.E.2d 134, 138 (Ill. 1950). Indeed, "once minerals have been severed from the reservoir or strata wherein they were originally contained, such minerals, including royalties thereon, become personalty." *Sabine Prod. Co. v. Frost Nat'l Bank of San Antonio*, 596 S.W.2d 271, 276 (Tex. Civ. App. 1980); *accord Finstrom v. First State Bank of Buxton*, 525 N.W.2d 675, 677 (N.D. 1994) ("Upon severance of the gravel, the royalty interest accrues and becomes a personal property interest."). In short, an interest in a royalty based on production is not an interest in the minerals in place. They are separate and distinct interests.

Here, the Letter Agreement's plain language clearly reveals that Sandstorm does not hold a real property interest. Instead, Sandstorm has a "production royalty." The Letter Agreement plainly states and defines the "production royalty" as ranging from 0.5% to 3.0% of the Net Smelter Return. SOF ¶ 17. This production royalty is nothing more than a right to payment after the sale of minerals mined from the Moss Mine.

A net smelter return is a term commonly used in the mining and smelting industries to determine the net amount payable to the mining company or royalty holder. "The term 'net smelter returns' shall be interpreted to mean the net amount received from the smelter in payment for direct smelting ores and concentrates less cost of transportation from the mine to the smelter and smelter charges." *Callahan Mining Corp. & Subsidiary, Pinacle Expl. Inc. v. Comm'r of Internal Revenue*, 51 T.C. 1005, 1010 (1969), *aff'd sub nom. Callahan Min. Corp. v. Comm'r*, 428 F.2d 721 (2d Cir. 1970); *United Mercury Mines Co. v. Bradley Min. Co.*, 259 F.2d 845, 847 (9th Cir. 1958) (describing net smelter return as "the amount received from the smelter from any and all ores, concentrates, metals or values shipped to a smelter, it being understood that the smelter will deduct its normal smelting charges"). Again, the royalty is tied to production, which can only occur after severance of the material. Therefore, a royalty tied to production like Sandstorm's can only be an accrued royalty.

The Letter Agreement's language is evident that the right to payment arises from "production," which necessarily occurs after severance of the minerals from the Property. SOF ¶ 17. Given that "the intent of the parties is expressed in clear and unambiguous language, there is no need or room for construction or interpretation and a court may not resort thereto." *Grosvenor*, 218 P.3d at 1050 (citation omitted). The Letter Agreement is not "reasonably susceptible" to Sandstorm's reading that a real property interest was created and conveyed. *Id.* Sandstorm's interest under the Letter Agreement is merely a right to payment (an accrued royalty) tied to production—a personal property interest.

2. Even if the Letter Agreement is an unaccrued royalty, the parties did not intend for the Letter Agreement to convey a real property interest, so Sandstorm has no real property interest.

Here, the Letter Agreement's plain language reveals that the parties did not intend for it to convey a real property interest. However, even if the Letter Agreement could be read as an unaccrued royalty, the parties must still intend that such an unaccrued royalty

be an interest in real property. *See Paloma Inv.*, 978 P.2d at 115 (stating an unaccrued royalty can only "be an interest in real property when the parties so intend").

Courts "will give effect to a contract as written where the terms of the contract are clear and unambiguous." *Mining Inv. Grp., LLC v. Roberts*, 177 P.3d 1207, 1211 (Ariz. Ct. App. 2008). "It is not within the province . . . of the court to alter, revise, modify, extend, rewrite or remake an agreement" *Id.* "If the meaning of a contract can be determined from the four corners of the document and cannot reasonably be construed in more than one sense, extraneous documents are irrelevant and the court must give effect to the language of the agreement." *United Cal. Bank v. Prudential Ins. Co. of Am.*, 681 P.2d 390, 410 (Ariz. Ct. App. 1983). "The mere fact that the parties disagree as to the meaning of language contained in the agreement is not sufficient to create an ambiguity." *Id.*

"The fundamental rule . . . is to give effect to the intention of the party executing the instrument, and this is to be arrived at by the language used." *Pass v. Stephens*, 198 P. 712, 714 (Ariz. 1921). "It is only when the terms of the writing are not clear that collateral evidence may be received to ascertain its intent. Otherwise the intent will be gathered from the instrument itself." *Id.*

As noted previously, in an unambiguous contract, the intent of the parties must be determined from the language of the agreement. However, there is no language to support that the parties intended to create a real property interest in favor of Sandstorm. Thus, Sandstorm does not hold a real property interest in the Property under the Letter Agreement.

First, as discussed, the Letter Agreement unambiguously creates only an interest in the right to payment from "production" of the minerals, not an interest in the minerals themselves. SOF ¶ 17. In *Paloma Investment*, the royalty interest was related to a conveyance of water rights, which are necessarily "interests in real property." 978 P.2d at 115. Thus, the royalty on those rights was a real property interest. *Id.* In contrast, here, the Letter Agreement's plain language only creates a right to payment from "*production*" of

the minerals, and does not convey to Sandstorm an interest in the land or minerals themselves. SOF ¶ 11 (emphasis added).

Second, the Letter Agreement contains no express language that it is binding on successors and assigns. SOF ¶ 18. The Letter Agreement is freely assignable, but only to the extent assignees "accept[] the terms and conditions of the Lease in writing." SOF ¶ 20. An interest cannot run with the land where enforcement of that interest depends on approval by the non-enforcing party. *Choisser v. Eyman*, 529 P.2d 741, 744 (Ariz. Ct. App. 1974). For example, in *Choisser*, the court determined that an interest in refund payments related to water rights did not run with the land where the right "had to be approved" before it could be transferred. *Id.* The requirement to get approval "negate[d] any intention that the refund rights would run with the land." *Id.* Here, too, the fact that an assignee of the Letter Agreement must "accept[] terms and conditions of the Lease in writing" shows that the parties did not intend for any payments to run with the land as a real property interest.

Third, and related, the Letter Agreement has a defined term of 20 years that only extends so long as "Patriot Gold holds all or portions of the 'Property.'" SOF ¶ 19. This type of "personal right . . . cannot, by definition, be a covenant running with the land." *Choisser*, 529 P.2d at 743. Indeed, that the Letter Agreement is, at most, only enforceable against (1) Patriot Gold or (2) its assignees that accept the terms and conditions of the Letter Agreement (as discussed) indisputably reveals that the Letter Agreement did not create any interest that is a real property interest.

Fourth, the Letter Agreement contains no other language that supports that it creates a real property interest. Even if the Court can construe Sandstorm's "production royalty" as an unaccrued royalty (which it should not), under Arizona law the agreement must set forth an intent to be a real property interest. An instrument "must contain sufficient words to show an intention to convey." *In re Alpha Nat. Res., Inc.*, 555 B.R. 520, 524 (Bankr. E.D. Va. 2016), *aff'd*, 237 F. Supp. 3d 369 (E.D. Va. 2017), *aff'd*, 712 F. App'x 256 (4th Cir. 2018). As discussed above, there is no evidence in the unambiguous Letter Agreement of any intent for the royalty to be a real property interest. Not only is the royalty inextricably

tied to production and sales, there is nothing in the Letter Agreement demonstrating any intent to convey a real property interest. Instead, the Letter Agreement's plain language shows that Sandstorm holds only a "Production Royalty" which, on its face, is a personal property interest, as discussed.

In addition, there is no obligation for GVC to pay the annual maintenance fees for the unpatented claims that comprise the Property. SOF ¶ 21. There is no obligation for GVC to report to anyone in any form or fashion or to notice anyone of any material events, including a sale, relating to the Property. SOF ¶ 22. There are no covenants of production, no indemnity provisions of any type or kind (at a minimum, a mineral interest owner would seek an environmental indemnity), and no security provisions. SOF ¶ 23. All of these facts—evident by a plain reading of the Letter Agreement—confirm no interest in land was conveyed or intended to be conveyed.

Whether considered to be an accrued royalty or an unaccrued royalty, the Letter Agreement creates no real property interest and, therefore, Sandstorm has no real property interest in the Property. Defendants are entitled to summary judgment on the declaratory relief claim.

B. <u>The Conversion and Constructive Trust Claims Also Fail</u>

Sandstorm has filed a claim against the Defendants for conversion and constructive trust. Constructive trusts are governed by state law. *In re Hampton Ventures, LLC*, 599 B.R. 474, 485 (Bankr. D. Conn. 2019). Generally, the law of the situs of the property governs the determination of which state's laws will apply. *Id.* In Arizona, the proof necessary to establish entitlement to a constructive trust is clear and convincing evidence. *Cal X-Tra v. W.V.S.V. Holdings, L.L.C*, 276 P.3d 11, 43 (Ariz. Ct. App. 2012). Since a constructive trust is an equitable remedy, there is no set formula or rigid rules a court must follow before imposing one. *Id*. However, being that a constructive trust is a remedy, Sandstorm's claim for conversion must be valid and, in this case, it is not.[3]

[3] Sandstorm also asserts a breach of contract claim, however, the appropriate remedy for that is not a constructive trust. Generally, a "run of the mill contract breach, which can be

1. There is no valid conversion claim.

"Conversion is defined as an act of wrongful dominion or control over personal property in denial of or inconsistent with the rights of another." *Case Corp. v. Gehrke*, 91 P.3d 362, 365 (Ariz. Ct. App. 2004). "[A]n action for conversion will not lie for money that is simply a debt." *Universal Mktg. & Entm't, Inc. v. Bank One of Ariz., N.A.*, 53 P.3d 191, 195 (Ariz. Ct. App. 2002). "Money can be the subject of a conversion where it can be described, identified or segregated, and an obligation to treat it in a specific manner is established." *Stokes v. Stokes*, 694 P.2d 1204, 1208 (Ariz. Ct. App. 1984).

Thus, in *Stokes*, the defendant's "failure to pay to [the plaintiff] one-half the amount of his monthly check created a debt which could have been discharged by payment of money generally." *Id.* "The parties' relationship with respect to the arrearages was a debtor-creditor relationship" that could not support a conversion claim. *Id.*

Here, too, even accepting Sandstorm's allegations, the parties only have a debtor-creditor relationship because Sandstorm is only contractually entitled to a percentage, approximately 0.5% to 3% of the net smelter return. SOF ¶ 17. Neither Sandstorm nor GVC knows how much is to be paid under the royalty agreement until the minerals are smelted and sold. There are no identifiable funds or property that specifically must be returned to Sandstorm. *See, e.g.*, *Stokes*, 694 P.2d at 1208. Instead, there is merely an amount due to Sandstorm after the gold is smelted and sold. This debt can simply be discharged by the payment of any money of the Defendants. *See id.* The conversion claim therefore fails.

2. Even if there was a valid claim for conversion, a constructive trust is unavailable given that money damages is an adequate remedy at law.

Generally, a constructive trust is "unavailable, and in fact improper, when an adequate remedy at law is available to the harmed party." *ML Servicing Co., Inc. v. Coles*, 334 P.3d 745, 752 (Ariz. Ct. App. 2014). Consequently, "a trust is not available to remedy

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addressed by an award of money damages" is not sufficient to support a constructive trust. *Murphy Farrell Development, LLLP v. Sourant*, 272 P.3d 355, 361 (Ariz. Ct. App. 2012).

a run of the mill contractual breach, which can be addressed by an award of money damages." *Murphy Farrell Dev., LLLP v. Sourant*, 272 P.3d 355, 361 (Ariz. Ct. App. 2012) (quoting Judge Ballinger, Superior Court Judge).

The court in *In re DC Energy, LLC* rejected the argument that failure to make contractual payments supported a constructive trust regardless of whether that obligation was called a "royalty interest" or "an income stream from [the] business." 555 B.R. 786, 793 (Bankr. D.N.M. 2016). Since the relationship "stemmed from an arm's-length, commercial transaction," and the underlying agreement "contain[ed] no trust language or prohibition on co-mingling, nor do they otherwise obligate the Debtor to hold Plaintiffs' funds in trust, there was no breach of fiduciary duty nor egregious injustice." *Id.* The bankruptcy court in that case concluded by saying that "if an insolvent debtor's failure to fulfill a contractual obligation was the type of unjust enrichment that gives rise to a constructive trust, 'the entire bankruptcy system would be unworkable.'" *Id.*

Here, Sandstorm's claim for amounts owed for the royalty is based entirely in contract and money damages will be adequate. There is no particular money or property to be held in a constructive trust, nor is there any "trust language" or other obligation to hold the funds in trust or to prevent co-mingling. *In re DC Energy*, 555 B.R. at 793. Indeed, Sandstorm is not requesting any specific or identified real or personal property but, rather, money damages in the amount of $1.5 million. [D.E. 34]. A constructive trust is not available.

Moreover, Sandstorm cannot "trace the funds" from its royalty interest to establish a constructive trust. *In re Advent Mgmt. Corp.*, 104 F.3d 293, 296 (9th Cir. 1997). Here, Defendants' senior secured lender—Maverix Metals Inc. ("Maverix")—injected funds into Defendants' operation to keep it afloat. SOF ¶ 27. . No tracing is possible here since there are *no proceeds from Sandstorm's royalty to trace*. Without an ability to trace the royalty proceeds, Sandstorm cannot obtain a constructive trust.

Finally, imposing a constructive trust here will prejudice the secured lender where Sandstorm had no security interest in any personal property. Sandstorm never filed any

UCC-1 filings. SOF ¶ 26. Without such a filing no party was on notice that Sandstorm asserted a priority claim to proceeds of the Debtors. Here, Maverix funded the operations through a secured loan that generated the proceeds that Sandstorm is now trying to place into a constructive trust. There is no basis to allow Sandstorm to trump Maverix's secured and perfected interest. Further, equity will not allow such an unfair result.

In sum, monetary remedies are adequate, and Sandstorm cannot trace the proceeds so that it can impose a constructive trust upon them. Sandstorm cannot establish entitlement to a constructive trust.

IV. CONCLUSION

Defendants are entitled to judgment as a matter of law on the declaratory relief claim and Sandstorm's claims for conversion and a constructive trust. Sandstorm cannot meet its burden to establish that the Letter Agreement created and conveyed a real property interest. Further, Sandstrom cannot prevail on its conversion claim or demonstrate that it is entitled to a constructive trust. Summary judgment is, therefore, necessary.

Sandstorm's royalty interest under the Letter Agreement is not a real property interest but a personal property interest. The clear and unambiguous terms of the Letter Agreement provide that Sandstorm holds a "production royalty," which is an accrued royalty and, thus, a personal property interest under Arizona law. There is no genuine issue of fact regarding the terms of the agreement, and the parties agree it is unambiguous. Even if the Court determined the royalty interest is an unaccrued royalty, the unambiguous Letter Agreement contains no language that that parties intended to create a real property interest as required by Arizona law. In short, the Letter Agreement is not "reasonably susceptible" to any reading that Sandstorm holds a real property interest.

Additionally, Sandstorm's claims for conversion and constructive trust fail as a matter of law. Sandstorm has an adequate remedy at law through monetary damages and it cannot trace the alleged proceeds to which it claims it is entitled. GVC's business was funded by its secured creditor and, without such funding, GVC would have not had any cash flow to operate its business.

Accordingly, the Defendants request that the Court grant the Motion and any further relief the Court deems just and proper.

DATED this 3rd day of July, 2025.

FENNEMORE CRAIG, P.C.

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COPY of the foregoing served via CM/ECF this 3rd day of July, 2025 upon all parties Registered to receive notices via CM/ECF and e-mailed to:

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