

FR: Gray/Robinson

TO: DRMS

**SECOND AMENDED ADVERSARY COMPLAINT
FOR A DECLARATORY JUDGMENT**

P-2008-003 P-2003-016 P-2006-009

RECEIVED

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

DIVISION OF RECLAMATION
MINING AND SAFETY

<p>In re,</p> <p>MERENDON MINING (Nevada), INC. a/k/a Milo Brost,</p> <p>Debtor.</p> <p>_____/</p> <p>MARCIA DUNN, Chapter 7 Trustee,</p> <p>Plaintiff,</p> <p>v.</p> <p>NORMAN R. FRANK, JAMESTOWN DEVELOPMENT CO., LLC, A COLORADO LIMITED LIABILITY COMPANY, WORLDWIDE RENTAL SERVICES, INC. A/K/A WORLDWIDE MACHINERY, INC., GERALYNN T. GRIEVE, LAWRENCE HITTLE, MARTIN WERNER, LESLIE G. TAYLOR, PAUL GARFINKLE, STATE OF COLORADO DEPARTMENT OF NATURAL RESOURCES, DIVISION OF MINERALS AND GEOLOGY, BOULDER COUNTY, COLORADO, BY AND THROUGH ITS TAX COLLECTOR, HILLARY HALL, CLERK OF COURT, BOULDER COUNTY, COLORADO, CLAIMANTS OF MERENDON MINING (Nevada), INC. WHO FILED SECURED CLAIMS, LEFT HAND DITCH COMPANY, JOHN DOE NOS. 1 THROUGH 1,000, THE NAMES BEING FICTITIOUS AND NOT PRESENTLY KNOWN TO THE PLAINTIFF,</p> <p>Defendants.</p>	<p>Case No. 09-11958-BKC-AJC</p> <p>Chapter 7</p> <p>Adv. Proc. No. 10-03623 AJC</p>
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SECOND AMENDED ADVERSARY COMPLAINT FOR A DECLARATORY JUDGMENT TO DETERMINE THE VALIDITY, EXTENT, AND PRIORITY OF ANY LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS IN THE BUENO AND BLACK ROSE MINING PROPERTIES LOCATED IN BOULDER COUNTY, COLORADO, INCLUDING THE INTERESTS OF ANYONE LAYING CLAIM TO THE ESTATE'S RIGHTS AND INTERESTS IN SUCH PROPERTIES, PURSUANT TO 11 U.S.C. §363(p)(2) AND RULE 7001(2), FED. R. BANKR. P.

Plaintiff, Marcia Dunn, as the Chapter 7 Trustee for the substantively consolidated Estate of the Debtor, Merendon Mining (Nevada), Inc., by and through her undersigned counsel, files this Amended Adversary Complaint to Determine the Validity, Extent, and Priority of any Liens, Claims, Encumbrances, and Interests in the Bueno and Black Rose Mining Properties located in Boulder County, Colorado, Including the Interests of Anyone Laying Claim to the Estate's Rights and Interests in Such Properties Pursuant to 11 U.S.C. §363(p)(2) and Rule 7001(2), Fed. R. Bankr. P., and in support thereof states as follows,

JURISDICTION AND VENUE

1. This Adversary Proceeding is brought pursuant to Bankruptcy Rule 7001 (2) seeking an order, judgment and decree from this Court determining the validity, priority, and extent of any liens, claims, encumbrances, and interests, including any interests of anyone laying claim to the estate's rights and interests in the mining properties generally known as the Bueno and Black Rose mines located in Boulder County, Colorado.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §1334(b) and the standing Order of Reference to the Bankruptcy Court in the Southern District of Florida, entered by the United States District Court Southern District of Florida, pursuant to 28 U.S.C. §157(a). Subject matter jurisdiction exists pursuant to 28 U.S.C. §157(b) as

a case under title 11 and a core proceedings arising under title 11, or arising in a case under title 11 in accordance with 28 U.S.C. §157(b)(2).

3. Venue of the case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

4. On February 4, 2009, Petitioning Creditors Eileen McCabe, Jane L. Otto, and Diane Kaplan-Berk filed a Chapter 7 Involuntary Petition in the Southern District of Florida against the Debtor, Merendon Mining (Nevada), Inc., a Nevada corporation, whose principal place of business was in Miami-Dade County, and on June 9, 2009, this court entered an Order for Relief (D.E. #29 in the main case¹).

5. On June 10, 2009, Marcia Dunn was appointed as the Chapter 7 Trustee (“Trustee”) (D.E. #30 in the main case.)

6. On December 15, 2009, the Trustee commenced Adversary Proceeding No. 09-02518-AJC (the “First Adversary Case”) (D.E. #65 in the main case, D.E. #1 in the First Adversary Case) against, (a) Merendon Mining (Colorado), Inc., a Colorado corporation, (b) Merendon Mining (Arizona), Inc., a Nevada corporation, (c) Merendon Mining (California), Inc., a Nevada corporation, (d) True North Productions, LLC, a Nevada corporation, and (e) Sentinel Mining Corporation, a Colorado corporation (collectively, the “U.S. Merendon Mining Entities”), requesting this Court, in relevant part, to,

a. pierce the corporate veil of U.S. Merendon Mining Entities pursuant to 11 U.S.C. §544(b) and applicable state common law, and

b. declare, pursuant to applicable state and federal law, that the assets

¹ In re, *Merendon Mining (Nevada), Inc.*, Case No. 09-11958-BKC-AJC Chapter 7

of U.S. Merendon Mining Entities, including, but not limited to the following assets, are property of the Debtor's estate pursuant to 11 U.S.C. §541, and must be turned over to the Trustee pursuant to 11 U.S.C. §542.

- i. title to Black Rose Mine, Jamestown, Boulder County, Colorado,
- ii. title to Bueno Mine, Jamestown, Boulder County, Colorado, (together, the "Beuno and Black Rose Mines"),
- iii. title to the mineral, gas and oil rights associated with the Bueno and Black Rose Mines,
- iv. title to the equipment and inventory associated with the Bueno and Black Rose Mines, and
- v. title to the gold and finished gold products associated with the Bueno and Black Rose Mines (collectively, the estate's interest in the Bueno and Black Rose Mines, including all mining claims and patents, and the property contained in (iv)-(vi) above that are located on-site at each mine shall be referred to in this Sale Motion as the "Bueno and Black Rose Mining Properties").

The legal descriptions for the Bueno and Black Rose Mines were attached to the complaint in the First Adversary case as part of Exhibit C (D.E. #1 in the First Adversary Case), and also attached as part of Exhibit A to the the original complaint filed on September 29, 2010 (D.E. 1).

7. On December 18, 2009, the Trustee filed a Motion for Substantive Consolidation of Non-Debtor Entities (the "Subcon Motion"), including the U.S.

Merendon Mining Entities (D.E. #70 in the main case, D.E. #8 in the First Adversary Case).

8. On December 28, 2009, the U.S. Merendon Mining Entities were served at their respective businesses or registered agents' addresses, with a summons (D.E. #4 in the First Adversary Case) and a copy of the First Adversary Case, the Subcon Motion, including the exhibits to each, and this Court's Pretrial Order issued in this matter (D.E. #5 in the First Adversary Case) (D.E. #9, D.E. #12, D.E. #13-3, pgs. 19-22, 39-42, 45 and 46 in the main case).

9. On January 27, 2010, this Court entered an Order (the "Subcon Order") substantively consolidating, among other non-debtor entities, the U.S. Merendon Mining Entities, *nunc pro tunc*, to the Petition Date (D.E. #84 in the main case, D.E. #20 in the First Adversary Case).

10. On February 10, 2010, the Trustee filed a Motion for Partial Summary Judgment against the U.S. Merendon Mining Entities, for, in relevant part, the relief requested in ¶6 above (D.E. #27 in the First Adversary Case).

11. On February 19, 2010, this court entered an Order setting a hearing on the Trustee's Motion for Partial Summary Judgment for March 11, 2010, and setting the deadline for filing objections by affidavit or memorandum for March 9, 2010 (D.E. #47 in the First Adversary Case), and on February 22, 2010, the Trustee filed and served a Notice Regarding Opposing Motions for Summary Judgment to the non-debtor defendant entities, including the U.S. Merendon Mining Entities. (D.E. #48 in the First Adversary Case). No opposition to the Motion for Summary Judgment was filed with this Court or served upon the Trustee.

12. On March 11, 2010, the Court entered an Order granting Partial Summary Judgment in favor of the Trustee (D.E. #62 in the First Adversary Case) (the “Judgment”)—in part—piercing the corporate veil of the U.S. Merendon Mining Entities, determining that the Bueno and Black Rose Mining Properties are property of the Debtor’s estate, substantively consolidating the Bueno and Black Rose Mining Properties into the Debtor’s estate, extending the automatic stay over the Bueno and Black Rose Mining Properties, and providing that all persons or entities claiming an interest, by way of ownership or lien, in any of the Bueno and Black Rose Mining Properties, may file a claim or adversary proceeding, as appropriate in the Bankruptcy Case.

13. The Bueno and Black Rose Mining Properties also include any additional property contained in any deeds in the name of any of the U.S. Merendon Mining Entities in Boulder, Colorado, including,

a. The deed that makes up the Black Rose Mine (the “Black Rose Deed,” (D.E. #1.2),

i. Warranty Deed dated December 29, 2004 from Norman R. Frank to Merendon Mining (Colorado), Inc., a Colorado corporation, recorded on January 20, 2005 in Boulder County, Colorado (Doc. No. 2659379).

b. The deed that makes up the Bueno Mine (the “Bueno Mine Deeds”), (D.E. # 1.3),

i. Warranty Deed dated December 29, 2004, from Jamestown Development Co., LLC, a Colorado Limited Liability Company, to Merendon Mining (Colorado) Inc. recorded on January 20, 2005 in

Boulder County, Colorado (Doc. No. 265396),

14. On March 12, 2010, the Trustee posted the Judgment to <http://gray-robinson.com/news.php?ACTION=view&CAT=1&ID=1475> in accordance with the Court's Order of December 30, 2009 (D.E. #74 in the main case) (D.E. #63 in the First Adversary Case).

15. On April 2, 2010, the Subcon Order and the Judgment were recorded in Boulder County, Colorado—the Subcon Order was recorded on March 4, 2010 (No. 03061827 and No. 03061908) and the Judgment was recorded on March 31, 2010 (No. 03066736).

16. On October 5, 2011, the Court entered an Order approving the sale of the Bueno and Black Rose Mining Properties (D.E. 284 in the main case).

**THE U.S. MERENDON MINING ENTITIES USED INVESTOR MONIES TO
PURCHASE THE COLORADO MINING PROPERTIES**

17. The Debtor and the substantively consolidated non-debtor entities, including the U.S. Merendon Mining Entities, operated a Ponzi scheme, wherein investor monies are directly traceable to the purchase the Bueno and Black Rose Mining Properties. In order to fully grasp the magnitude of the Ponzi scheme, the Trustee incorporates the complaint from the First Adversary Case, including the Affidavit of Paul Garfinkle, (D.E. #65 and #66, Ex. A, D.E. # 1 and #3, Ex. A, in the first First Adversary Case) and the Affidavit of Barry Mukamal dated September 18, 2009 (D.E. #65 and 66, Ex. B, D.E. #1 and #3, Ex. B. in the Adversary Case) (“Mukamal Affidavit), and the Subcon Order. What follows is a brief summary of the history of Merendon Mining in the United States as it relates to the Bueno and Black Rose Mining Properties.

18. In 2002, one the originators of the Ponzi scheme, Milo Brost (“Brost”)

began the process of bringing Merendon Mining to the United States. It was around this time that Paul Garfinkle ("Garfinkle") was introduced to Brost at one of Brost's financial workshops held in Fort Lauderdale, Florida.

19. At the time he met Brost, Garfinkle held a Power of Attorney over some gold mining properties in Colorado, and had a gold mining opportunity here in the United States. They began to discuss Brost possibly acquiring those assets for some of his programs, through his Merendon Mining investment vehicles. Brost wanted to see some of the reports and paperwork on these opportunities, so Garfinkle sent Brost geologist reports and information concerning the mining opportunity, maps and other supporting documentation. The name of the mine was The Glory Hole, also known as Chain-O-Mines, located outside of Denver in Central City (Boulder County), Colorado (previously referred to as the "Glory Hole Mine"). Garfinkle presented the Glory Hole Mine to Brost as an opportunity for the Merendon Mining enterprise to acquire an interest for the benefit of their investors.

20. Upon reviewing the information on the Glory Hole Mine, Brost wanted to acquire the mine for Merendon Mining, and said he would fund the litigation as well as the ongoing operations. Brost did not explain how he was going to fund the litigation and operations of the Glory Hole Mine, except that Sorenson and his investment group, through one of their Merendon Mining investment vehicles, would fund the litigation and thereafter develop the mine. Brost and Sorenson used monies that they raised from investors to fund the litigation with regard to the Glory Hole Mine and to subsequently acquire the Black Rose Mine and Bueno Mine. In particular, the monies used to acquire the Colorado Mining Entities came from the investors of what eventually turned into the

Debtor, Merendon Mining (Nevada), Inc.

21. Certain patents from the Glory Hole Mine were later transferred into the name of Sentinel Mining Corporation (“Sentinel”), for which Brost served as an officer and director, and Garfinkle was the registered agent.

22. The first Merendon Mining company in the United States, Merendon Mining (Nevada), Inc., the Debtor, was formed in Nevada on December 30, 2002, to begin to develop the Glory Hole Mine and other mining opportunities. However, there were other existing or ongoing companies which were all part and parcel in the overall Merendon Mining, Brost and Sorenson operation. The purpose of the initial U.S. Merendon Mining company was to take over the Glory Hole Mine.

23. The Debtor was the first of several interconnected and intertwined Merendon Mining corporate entities established in the U.S. for the purposes of acquiring interests in gold mines and operations in America.

24. The Debtor was intended to be the holding company for all the U.S. Merendon Mining acquisitions. Brost and Sorensen acted together as sort of co-chief financial and co-chief operating officers, and in such capacity they controlled this and all the other Merendon Mining operations, both in the U.S. and abroad. The two of them were the singular active participants, the directors and the parties in complete control over all of these interconnected and related entities’ affairs. All of the properties and companies were under the direct and strict control and supervision of Brost and Sorenson, who along with members of both their families held their interests through closely held partnerships.

25. Brost formed Merendon Mining (Colorado), Inc. on November 5, 2003 in

the State of Colorado. Subsequently, Merendon Mining (Colorado), Inc. was to merge into and become part of Debtor. On October 5, 2004, amended and restated Articles of Incorporation were filed with the Nevada Secretary of State changing the name of the Debtor, Merendon Mining (Nevada), Inc. to Merendon Mining (Colorado), Inc., a Nevada corporation. Thus, the Debtor, Merendon Mining (Nevada), Inc. n/k/a Merendon Mining (Colorado), Inc., a Nevada corporation, and Merendon Mining (Colorado), Inc., a Colorado corporation, have identical names, and were intended to be one and the same entity.

26. Brost maintained bank accounts at US Bank in Colorado, and all of the investor monies were initially deposited into those accounts. The funds to acquire each of the Bueno and Black Rose Mines for the Merendon Mining companies came through US Bank in Boulder, Colorado under the Debtor, Merendon Mining (Nevada), Inc. n/k/a Merendon Mining (Colorado), Inc., a Nevada corporation. Investor funds were deposited, commingled and used to pay a variety of expenses for each of the separate mines owned or to be acquired by each of the separate companies. All the Merendon Mining entities were created as part of Brost's scheme to defraud investors, and were to be operated as a single entity under the Debtor as the umbrella corporation, with the goal of acquiring mining properties, putting them into operation, getting the gold concentrate, and then sending the gold to Sorensen in Honduras for processing by Merendon Honduras, the refinery owned by Sorenson, where the smelting and manufacturing of the gold would take place.

27. The Debtor, under different corporate umbrellas, acquired the various mining operations. There are four American based Merendon Mining companies, (a)

Debtor, Merendon Mining (Nevada) n/k/a Merendon Mining (Colorado), Inc., a Nevada corporation, (b) Merendon Mining (Colorado), Inc., a Colorado corporation, (c) Merendon Mining (Arizona), Inc., a Nevada corporation, and (d) Merendon Mining (California), Inc., a Nevada corporation, (previously referred to as the “U.S. Merendon Mining Entities”). Each of the companies had interests in, acquired, or had contracts to buy various mining properties within the United States.

28. The Bueno and Black Rose Mining Properties were purchased with investor money, raised through the Debtor’s investment vehicle, The Institute for Financial Learning Group of Companies, Inc., placed in the Debtor’s accounts at US Bank in Colorado, and contracted for by the Debtor, notwithstanding what corporate entity ultimately acquired title to the mines. The “Bueno” and “Black Rose” mining properties located in Jamestown, Colorado, were purchased in the name of Merendon Mining (Colorado).

29. While the individuals who physically worked at a particular mine would work solely for that mine and rarely visit or perform work for or at other mines, all of the U.S. Merendon Mining Entities had the same corporate employees, all of whom served the same role and function no matter which entity for which they were performing a particular task. Les Taylor (“Taylor”), an individual who had previously worked with Sorenson in his other operations, came to work as Director of Mining Operations for all the Merendon Mining companies, particularly the U.S. Merendon Mining Entities.

30. Sorenson and Brost had created Merendon Mining, and the U.S. Merendon Mining Entities were all a part of this large worldwide complex run under the Merendon or Merendon Mining name, whether it was in Canada, the United States, or

Central and South America.

31. Brost and Sorenson would form a separate corporation for each of their entities as needed, without a clear delineation from company to company as Brost and Sorenson treated and ran all of the companies as one and the same enterprise to defraud the investors.

32. There were regular meetings, mine tours, and seminars for investors. At each of these seminars, the investors were told that they would be getting a return on their investment, and that their investments were all backed by gold possessed by Sorenson. However, the investors were never advised as to how or in which Merendon Mining entity the funds were being invested. Brost and Sorenson treated this all as one Merendon Mining Enterprise (the "Merendon Mining Enterprise") whether it was Canada, the United States, Central or South America, and it was all treated, and presented to the investors, as one and the same Merendon Mining Enterprise.

33. The investors were not given a choice as to which Merendon Mining entity they wanted their money invested. There was no delineation between the four companies - it was all "Merendon Mining." When an investor went to an IFFL meeting, he or she would be solicited to invest in "Merendon Mining," without any distinction between Merendon Mining (Colorado), Merendon Mining (Nevada), Merendon Mining (Arizona), or Merendon Mining (California). Rather, the investor was sold on the singular Merendon Mining enterprise, operated as an umbrella through the Debtor, encompassing the entire American, Canadian and Honduras companies and their operations, along with other related entities controlled by Brost and Sorenson.

34. There were no oral or written representations or documentation advising

any of the investors that their money was being invested in one Merendon Mining entity over another, or otherwise explaining to the investor that their money was being invested to acquire a specific mine. Funds were raised solely from investors with no investment from the principals. Expenses for the mines were paid without discrimination as to which mine was owned by which company. Whether it was the cost to maintain any particular property, to hire a geologist, or retain an attorney for a closing, the principals dipped into the one source of money maintained in the US Bank accounts comprising the monies raised from the investors, regardless of its source, or which company or mine for whose benefit the expenditure was to be made.

35. There were no separate books and records for the Debtor, Merendon Mining (Colorado), Merendon Mining (Arizona), or Merendon Mining (California). The Merendon Mining corporate insiders completely and routinely disregarded the corporate formalities. A review of the Debtor and its affiliates' bank statements and other financial documentation similarly reflects the commingling of investor money, and through this documentation, the Trustee has been able to trace the investor monies into the Bueno and Black Rose Mining Properties.

**DEFENDANTS WHO MAY HAVE A LIEN, CLAIM, ENCUMBRANCE OR
OTHER INTEREST IN ONE OR MORE COLORADO MINING PROPERTIES**

36. Defendant, Norman R. Frank ("Frank"), is an individual who claims an ownership interest in equipment at the Bueno Mine, but has not provided any evidence of ownership of such equipment. A letter attaching a list of the equipment was attached as Exhibit E to the original complaint (D.E. #1.6). Mr. Frank submitted to the Trustee additional documents that were attached as Composite Exhibit A to the first amended complaint (D.E. 8).

37. Defendant, Jamestown Development Co., LLC, is a Colorado limited liability company which may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

38. Defendant, Worldwide Rental Services, Inc., a/k/a Worldwide Machinery, Inc., is a Colorado corporation which asserts a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

39. Defendant, Geralynn T. Grieve, is a Colorado resident who may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties. In Boulder County, Colorado, there is a Warranty Deed dated April 28, 2006, from Merendon Mining (Colorado) Inc., a Colorado corporation, to Geralynn T. Grieve, recorded on May 10, 2006 (Doc. No. 2775630), which omits the legal description of the property. An Affidavit recorded on May 23, 2010 in Boulder County, Colorado attached a legal description for the Warranty Deed, which is Parcel I of the Bueno Mine. *See* D.E. 1.7 in the original complaint.

40. Defendant, the State of Colorado Department of Natural Resources, Division of Minerals and Geology, may assert a claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

41. Defendant, Boulder County, by and through its tax collector, may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

42. Defendant, Hillary Hall, as Clerk of the Court for Boulder County, Colorado, as recorders of deeds and other conveyances, may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

43. Defendant, Martin Werner, is a Florida resident, who may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

44. Defendant, Leslie G. Taylor, is an Oregon resident who may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

45. Defendant, Left Hand Ditch Company, is a Colorado company which may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

46. Defendant, Lawrence Hittle, is a Colorado resident who may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

47. Defendant, Paul Garfinkle, is a Florida resident who may assert a lien, claim, encumbrance, or other interest on the Bueno and Black Rose Mining Properties.

48. Defendants, Claimants of Merendon Mining (Nevada), Inc., who filed secured claims.

49. Defendants, John Doe Nos. 1 through 1,000, the names being fictitious and not presently known to the plaintiff, may assert a lien claims, encumbrance, or other interest in the Bueno and Black Rose Mining Properties.

50. The Defendants are required to prove their respective co-owner interests, and those who fail to do so, are precluded from either (i) thereafter asserting or proving title and/or ownership of the co-owner interest, or (ii) sharing in the receipt of sale proceeds in accordance with the requirements of 11 U.S.C §363(p)(2).

51. The Trustee requests that the Court determine the interests of the Defendants after the sale of the Bueno and Black Rose Mining Properties. The Trustee will hold the amount realized from the sale of the Bueno and Black Rose Mining

Properties in escrow pending a determination by this Court of the relative interests of such property and then make distributions based upon such determination.

52. The Trustee further requests that those Defendants who either assert and/or hold and claim interests in one or more of the Bueno and Black Rose Mining Properties, which interests are liens, encumbrances, security interest, mortgages, tax liens, or judgments or a claim secured by one or more of the foregoing prove the validity, priority, or extent of their Liens and Encumbrances in accordance with the requirements of §363(p)(2).

53. Defendants who fail to prove the validity, priority, or extent of their liens, claims, encumbrances, or interests in the Bueno and Black Rose Mining Properties are precluded from receiving distribution of proceeds from sale or other disposition thereof.

54. Proof of the validity, priority or extent of liens, claims, encumbrances, or interests is necessary to,

- a. ensure that payment to a Defendant upon adjudication of their interests is warranted, proper, in the correct amount, and will discharge their interests,
- b. assure the ultimate purchaser and the title insurance company insuring title, that a Debtor who is a seller of its own interest has paid, discharged or provided adequately for the payment and discharge of all interests,
- c. ensure that marketable, or acceptable, title can be conveyed by Debtors to the ultimate purchaser of the Bueno and Black Rose Mining Properties, free and clear of all liens, claims, encumbrances, and interests, including anyone laying claim to an ownership interest in the Bueno and Black Rose Mining Properties, and

d. assure compliance with the Sale Procedures in the pending Sale Motion.

COUNT

[Declaratory Judgment to Determine Validity, Extent, and Priority of Liens, Claims, Encumbrances, and Interests in the Bueno and Black Rose Mining Properties, Including Anyone Laying Claim to the Estate's Rights and Interests in Such Properties]

55. Plaintiff reincorporates and realleges the allegations contained in Paragraphs 1 through 128 above as if fully set forth herein.

56. This is an action for equitable and declaratory relief brought pursuant to 7001(2), Fed. R. Civ. P., and 11 U.S.C. §363(p)(2) to determine the validity, extent, and priority of liens, claims, encumbrances, and interests in the Bueno and Black Rose Mining Properties, including anyone laying claim to the estate's rights and interests in such properties.

57. This Court should determine which of Defendants have proven the validity, priority or extent of their respective liens, claims, encumbrances, and interests, including disputed ownership interests, pursuant to 11 U.S.C. §363(p)(2) in order to determine the amount of the distribution they are entitled to receive from the net proceeds from the sale of the Bueno and Black Rose Mining Properties, after costs and expenses of such sale, including all administrative expenses that have enabled the Trustee to recover and sell the Bueno and Black Rose Mining Properties.

58. Each of the Bueno and Black Rose Mining Properties consist of the mining rights and claims in mines, and partition thereof into allocable defined sections is impracticable due to the unique character of such mines, location, relative comparable values thereof, and complex issues involving mining rights. Disparate values of one portion of a particular mine to another portion of a particular mine makes partition

unworkable and impracticable.

WHEREFORE, the Trustee requests this Court enter a declaratory judgment that determines the validity, extent, and priority of liens, claims, encumbrances, and interests in the Bueno and Black Rose Mining Properties, including any Defendants laying claim to the estate's rights and interests in such property, awarding the Trustee her attorneys fees and costs expended to prosecute this adversary proceeding, and granting such other, further and different relief as the Court deems just and proper.

Dated: December 16, 2011

Respectfully submitted,

GRAYROBINSON, P.A.
Attorneys for Plaintiff, Marcia Dunn,
Chapter 7 Trustee
401 E. Las Olas Boulevard, Suite 1850
Fort Lauderdale, FL 33301
Phone 954-761-8111/Fax 954-761-8112

By: /s/ Ivan J. Reich, Esq.
Ivan J. Reich, Esq.

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Form CGFI15 (10/10/14)

United States Bankruptcy Court
Southern District of Florida
www.flsb.uscourts.gov

Case Number: 09-11958-AJC

Adversary Number: 10-03623-AJC

In re:

Name of Debtor(s): Merendon Mining (Nevada), Inc.
----- /

Marcia J. Dunn

Plaintiff(s)

VS.

Martin Werner, Norman R. Frank, Jamestown Development
Co., LLC, Worldwide Rental Services, Inc., Geralynn T.
Grieve, State of Colorado, Boulder County, Colorado,
Hillary Hall, Leslie G. Taylor, Left Hand Ditch Company,
Lawrence Hittle, Estate of Robert F. Barnes and Paul
Garfinkle

Defendant(s)
----- /

ALL DOCUMENTS REGARDING THIS MATTER
MUST BE IDENTIFIED BY BOTH ADVERSARY
AND BANKRUPTCY CASE NUMBERS

**ALIAS SUMMONS AND NOTICE OF PRETRIAL/TRIAL
IN AN ADVERSARY PROCEEDING**

YOU ARE SUMMONED and required to file a motion or answer to the complaint which is attached to this summons with the clerk of the bankruptcy court at the address indicated below within 30 days, pursuant to BR 7012, after the date of issuance of this summons, except that the United States and its offices and agencies shall submit a motion or answer to the complaint within 35 days.

US Bankruptcy Court
301 North Miami Avenue, Room 150
Miami, FL 33128

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney
Ivan J Reich Esq
401 E. Las Olas Blvd #1000
Ft Lauderdale, FL 33301

If you make a motion, your time to answer is governed by Bankruptcy Rule 7012. Pursuant to BR 7007.1, and Local Rule 7003-1(B)(2) corporate defendants must file a corporate ownership statement.

PRETRIAL CONFERENCE INFORMATION:

Date: April 27, 2015

Time: 10:00 AM

Location: C. Clyde Atkins U.S. Courthouse, 301 North Miami Avenue, Courtroom 7, Miami, FL 33128

TRIAL INFORMATION:

A TRIAL WILL BE HELD DURING THE ONE-WEEK TRIAL PERIOD BEGINNING ON THE DATE OF THE PRETRIAL CONFERENCE.

Time: 10:00 AM to 12:00 NOON and 2:00 PM to 5:00 PM DAILY

Location: C. Clyde Atkins United States Courthouse, 301 North Miami Avenue, Miami, FL 33128

IF THE TRIAL WILL INVOLVE OUT OF TOWN PARTIES OR WITNESSES, THE CALENDAR CLERK SHOULD BE ADVISED PRIOR TO THE PRETRIAL CONFERENCE IN ORDER TO SET A DATE CERTAIN FOR TRIAL DURING THE TRIAL PERIOD.

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.



Clerk of Court

By: Ida Barr
Deputy Clerk

Dated: March 2, 2015

CERTIFICATE OF SERVICE

I, _____ (name), certify that service of this summons and a copy of the complaint was made _____ (date) by:

- ☐ Mail Service: Regular, first class United States mail, postage fully pre-paid, addressed to:

- ☐ Personal Service: By leaving the process with defendant or with an officer or agent of defendant at:

- ☐ Residence Service: By leaving the process with the following adult at:

- ☐ Certified Mail Service on an Insured Depository Institution: By sending the process by certified mail addressed to the following officer of the defendant at:

- ☐ Publication: The defendant was served as follows: [Describe briefly]

- ☐ State Law: The defendant was served pursuant to the laws of the State of _____, as follows: [Describe briefly]

If service was made by personal service, by residence service, or pursuant to state law, I further certify that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made.

Under penalty of perjury, I declare that the foregoing is true and correct.

Date: _____ Signature: _____

Print Name:

Address:

City:

State:

Zip:

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Form CGFI19 (7/14/14)



ORDERED in the Southern District of Florida on March 2, 2015

A handwritten signature in cursive script that reads "A Jay Cristol".

A. Jay Cristol
United States Bankruptcy Judge

United States Bankruptcy Court
Southern District of Florida
www.flsb.uscourts.gov

In re:

Name of Debtor(s): Merendon Mining (Nevada), Inc.

Case Number: 09-11958-AJC

-----/

Marcia J. Dunn

Plaintiff(s)

VS.

Martin Werner, Norman R. Frank, Jamestown Development Co., LLC, Adversary Number: 10-03623-AJC
Worldwide Rental Services, Inc., Geralynn T. Grieve, State of Colorado,
Boulder County, Colorado, Hillary Hall, Leslie G. Taylor, Left Hand Ditch
Company, Lawrence Hittle, Estate of Robert F. Barnes and Paul
Garfinkle

Defendant(s)

-----/

**ORDER SETTING FILING AND DISCLOSURE REQUIREMENTS
FOR PRETRIAL AND TRIAL**

To expedite and facilitate the trial of this adversary proceeding, it is:

ORDERED as follows:

- 1(a). **RIGHT TO JURY TRIAL: WAIVER.** Unless each party has timely filed a statement of consent under Local Rule 9015-1(B), and unless otherwise ordered by the Court, not later than ten (10) days before the pretrial conference, as the same may be continued by the Court, each party requesting a jury trial on any issue in this proceeding shall file with this court pursuant to Local Rule 5011-1 a motion for withdrawal of the reference. FAILURE OF ANY PARTY TO FILE A MOTION TO WITHDRAW THE REFERENCE ON OR BEFORE THE DEADLINE PROVIDED IN THIS PARAGRAPH SHALL CONSTITUTE WAIVER BY SUCH PARTY OF ANY RIGHT TO TRIAL BY JURY IN THIS PROCEEDING.

- (b). **OBJECTION TO ENTRY OF FINAL ORDERS AND JUDGMENTS BY THE BANKRUPTCY COURT: CONSENT.** Unless otherwise ordered by the Court, not later than ten (10) days before the pretrial conference, as the same may be continued by the Court, each party objecting to the entry of final orders or judgments by this court on any issue in this proceeding, whether or not designated as "core" under 28 U.S.C. §157(b), shall file with this court a motion requesting that this court determine whether this proceeding is a core proceeding or otherwise subject to the entry of final orders or judgments by this court. Any such motion shall be treated as an objection to the entry of final orders or judgments by this court. FAILURE OF ANY PARTY TO FILE A MOTION ON OR BEFORE THE DEADLINE PROVIDED IN THIS PARAGRAPH SHALL CONSTITUTE CONSENT BY SUCH PARTY TO THIS COURT ENTERING ALL APPROPRIATE FINAL ORDERS AND JUDGMENTS IN THIS PROCEEDING. Nothing in this paragraph limits this court's ability to determine sua sponte whether this proceeding is a core proceeding under 28 U.S.C. §157(b)(3) or otherwise subject to entry of final orders or judgments by this court.
2. **DISCLOSURES.** Except as otherwise ordered by the court, Rules 26(d)(1) and 26(f), Fed.R.Civ.P., shall not apply to this adversary proceeding. The disclosure requirements of Rules 26(a)(1), 26(a)(2), and 26(a)(3)(A), Fed.R.Civ.P., shall apply, but according to the following deadlines:
- a. The initial disclosures required by Rule 26(a)(1), Fed.R.Civ.P., shall be made at least thirty (30) days before the pretrial conference.
 - b. The disclosure of expert testimony under Rule 26(a)(2), Fed.R.Civ.P., shall be made (i) at least twenty (20) days before the pretrial conference or (ii) within ten (10) days after an opposing party's disclosure of evidence that gives rise to the need for the expert, whichever is later. The party disclosing an expert witness shall, within ten (10) days of the disclosure, but in no event less than five (5) days before the pretrial conference, provide to each opposing party a written report prepared and signed by the witness as required by Rule 26(a)(2)(B), Fed.R.Civ.P.
 - c. The pretrial disclosures under Rule 26(a)(3)(A), Fed.R.Civ.P., shall be made no later than the pretrial conference.
 - d. All disclosures under Rules 26(a)(1), 26(a)(2), and 26(a)(3)(A), Fed.R.Civ.P., shall be made in writing, signed, served, and, except for copies of exhibits and expert witness reports, shall be filed with the court.
3. **DISCOVERY.** All discovery shall be completed not later than ten (10) days before the pretrial conference. The court will allow discovery after that date only upon a showing of good cause.
4. **JOINT PRETRIAL STIPULATION.** If any party is not represented by counsel in this proceeding, this paragraph shall not apply. All parties to this proceeding shall meet not later than ten (10) days prior to the pretrial conference to confer on the preparation of a Joint Pretrial Stipulation in substantially the form of Local Form 63C. The plaintiff shall file the fully executed Joint Pretrial Stipulation no later than one (1) business day prior to the pretrial conference. The court will not accept unilateral statements and will strike *sua sponte* any such submissions. Should any of the parties fail to cooperate in the preparation of the Joint Pretrial Stipulation, any other party may file a motion requesting an order to show cause why such party or parties (and/or their counsel) should not be held in contempt for failure to comply with this order.
5. **TRIAL DATE.** At the pretrial conference, the court will set the trial of this proceeding.

6. **SPECIAL SETTINGS.** If the attorney(s) trying the case are from outside this district, or the parties or witnesses are from outside this district, or if some other reason exists that justifies a request to the court to specially set trial at a time or date certain, counsel shall request appropriate relief at the pretrial conference.
7. **DOCUMENTS REQUIRED BEFORE TRIAL.**
 - a. Each party shall deliver to each opposing party (but not file), so as to be received no later than 4:00 p.m. four (4) business days prior to the pretrial conference, the following documents:
 - (1) A set of pre-marked exhibits (including summaries) intended to be offered as evidence at trial. Exhibits tendered by plaintiff(s) shall be marked numerically, and exhibits tendered by defendant(s) shall be marked alphabetically. Exhibits shall be bound in one or more notebooks or contained in one or more folders, with tabs marking each exhibit, and shall be accompanied by an Exhibit Register conforming to Local Form 49.
 - (2) With regard to any summary the party will offer in evidence at trial, a notice of the location(s) of the books, records, and the like, from which each summary has been made, and the reasonable times when they may be inspected and copied by adverse parties.
 - b. Unless otherwise ordered, each party shall file and deliver, so as to be received no later than 4:00 p.m. two (2) business days prior to the pretrial conference, any objection to the admissibility of any proposed exhibit, including any deposition transcript or recording (audio or video) or any summary. The objection must (i) identify the exhibit, (ii) state the grounds for the objection, and (iii) provide citations to case law and other authority in support of the objection. An objection not so made – except for one under Federal Rule of Evidence 402 or 403 – is waived unless excused by the court for good cause.
8. **SWORN DECLARATIONS.** At each party's option, the direct testimony of any witness, except adverse, hostile, or rebuttal witnesses, may be presented by sworn declaration consisting of a succinct written statement of the direct testimony that the witness would be prepared to give if questions were propounded in the usual fashion at trial. If a party offers a sworn declaration in lieu of direct testimony:
 - a. The statement shall substantially conform to Local Form 63B and shall be signed by the declarant under penalty of perjury;
 - b. Each statement of fact shall be separate, shall be sequentially numbered, and shall contain only facts that are relevant and material to the contested issue before the court, avoiding redundancies, hearsay, and other obviously objectionable statements;
 - c. The statement may be referenced as the witness's "sworn declaration of fact;"
 - d. The original sworn declaration of fact shall be marked as a proposed exhibit and filed and served as otherwise required by this order;

- e. Objections to any portion of a sworn declaration of fact may be raised at the time the sworn declaration of fact is offered to the court. The witness shall then be sworn and asked if the sworn declaration of fact correctly reflects the testimony that would be given if the witness was asked the appropriate questions. Opposing counsel may then cross-examine the witness. At the conclusion of cross-examination, the party whose witness is on the stand may conduct redirect examination in the usual manner; and
 - f. The court may require that direct testimony be provided in the usual manner during trial even if a sworn declaration of fact is offered.
9. **FINAL ARGUMENT.** At the conclusion of the trial, in lieu of final argument, the court may request that each party submit (a) a written closing statement with supporting legal argument or (b) a proposed memorandum opinion with findings of fact and conclusions of law with a separate proposed final judgment, in word processing format, to an electronic mailbox designated by the court. The filer must include in the "subject" line the case name and number and the date of the relevant hearing.
 10. **DISPOSITIVE MOTIONS.** All motions to dismiss and motions for summary judgment shall be filed and served not later than ten (10) days before the pretrial conference and shall comply with Local Rule 7056-1, if applicable. Absent good cause, failure to file and serve such a motion in a timely manner shall constitute waiver of the right to do so. Absent prior permission of the Court, no party shall file any motion to dismiss, motion for summary judgment, or response thereto, exceeding twenty (20) pages in length, and no party shall file any reply exceeding ten (10) pages in length. Title pages preceding the first page of text, signature pages, and certificates of service shall not be counted as pages for purposes of this paragraph.

If a party submits affidavits, declarations, or other materials in support of or in opposition to a motion for summary judgment, then: (A) the movant must serve with the motion all such materials; and (B) the opposing party must serve with the response all such materials in opposition to the motion. Any reply shall be strictly limited to rebuttal of matters raised in the response. Absent prior permission of the Court, in connection with any motion for summary judgment no party shall file affidavits or declarations that exceed twenty (20) pages in the aggregate.
 11. **COMPLIANCE WITH FEDERAL JUDICIARY PRIVACY POLICY.** All papers, including exhibits, submitted to the court must comply with the federal judiciary privacy policy as referenced under LR 5005-1(A)(2).
 12. **MEDIATION.** Pursuant to Local Rule 9019-2, the court may order the assignment of this proceeding to mediation at the pretrial conference or at any other time, upon the request of a party or upon the court's own motion.
 13. **SETTLEMENT.** If the proceeding is settled, the parties shall submit to the court a stipulation or proposed judgment approved by all parties prior to the date of trial. If a judgment or stipulation is not submitted to the court, all parties shall be prepared to go to trial. If the proceeding is removed from the trial calendar based upon the announcement of a settlement, the proceeding will not be reset for trial if the parties fail to consummate the settlement. In such event, the court will consider only a motion to enforce the settlement, unless the sole reason the settlement is not consummated is that the court did not approve the settlement, in which case the matter will be reset for trial at a later date.
 14. **DEFAULT.** If any defendant fails to answer or otherwise respond to the complaint in a timely manner, the plaintiff(s) shall promptly seek entry of a clerk's default pursuant to Bankruptcy Rule 7055(a), and Local Rule 7055-1, and shall move for default judgment. Unless judgment has been entered or the court advises the plaintiff(s) that the pretrial conference has been continued or canceled, the plaintiff(s) shall appear at the pretrial conference.

15. **SANCTIONS.** Failure to comply with any provision of this order or failure to appear at the pretrial conference may result in appropriate sanctions, including the award of attorney's fees, striking of pleadings, dismissal of the action, or entry of default judgment.
16. **CONTINUANCES.** Continuances of the pretrial conference or trial or any deadlines set forth in this order must be requested by written motion. Any request for continuance or amendment to this order shall set forth the status of discovery, including exchange of disclosures required under this order, and shall state the reasons why the party or parties seek a continuance.
17. **SERVICE.** Plaintiff(s)' counsel shall serve a copy of this order on the defendant(s) with the summons and complaint.

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A copy of this order was furnished to Ivan J Reich Esq on behalf of the Plaintiff on March 2, 2015.

By: Ida Barr
Deputy Clerk

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