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RONALD A. LONGTIN, JR.
BY A. Simpson

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
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9 SAMUEL G. NUNNEMAKER, an individual, and
10 ROBERT G. CARRINGTON, an individual,

CASE NO.: CV04 00973

11 Plaintiffs,

DEPT. NO.: 3

12 vs.

13 AMERICAN INTERNATIONAL VENTURES,
14 INC., a Delaware Corporation, JACK WAGENTI,
an individual, and BARRY DOWNS, an
individual,

15 Defendants.
_____/

16 AMERICAN INTERNATIONAL VENTURES,
17 INC., a Delaware Corporation,

18 Defendant and Counterclaimant,

19 vs.

20 SAMUEL G. NUNNEMAKER, an individual, and
21 ROBERT G. CARRINGTON, an individual, and
DOES 1 through 10,

22 Plaintiffs and Counterdefendants.
_____/

23 **ORDER CANCELLING NOTICE OF LIS PENDENS**
24

25 THIS MATTER came before the Court upon Request by Defendants pursuant to NRS 14.015 for a
26 hearing upon Notice of Lis Pendens filed by Plaintiffs with this Court on August 19, 2004 against real
27 properties referred to in this litigation and hereafter as the "Bruner Property." A copy of the Notice of Lis
28 Pendens is attached to this Order as Exhibit 1. The Defendants request that the Notice of Lis Pendens be

1 cancelled, removed and expunged. This Court conducted the requested hearing on October 27, 2004 and
2 considered exhibits introduced by the parties, together with the testimony of Plaintiff, Robert Carrington, and
3 non-party witness, Mr. Jim McKay. The Court also considered the points and authorities submitted by the
4 parties, as well as the pleadings and papers of record.

5 The Plaintiffs have burdens of proof set forth in NRS 14.015(2)(a) through (d), and the additional
6 burdens stated in NRS 14.015(3)(a) or (b). Plaintiffs have not satisfied their burdens of proof under these
7 statutory provisions.

8 Under NRS 14.015(2)(a), Plaintiff must first establish that the action is for the foreclosure of a
9 mortgage upon the real property described in the Notice of Lis Pendens, or affects the title or possession of
10 the real property described in the Notice of Lis Pendens. This Court has considered the evidence presented
11 together with the rescission claim in Plaintiffs' Complaint, and finds that this litigation is not an action
12 affecting the title or possession of the real property described in Plaintiffs' Notice of Lis Pendens. Plaintiffs
13 conceded that they never had a written or verbal agreement for the purchase of the Bruner Property.
14 Consistently, Plaintiffs produced no evidence of such which could satisfy the statute of frauds. Plaintiffs
15 contend that they had a verbal option with Miramar/Orcana regarding the Bruner Property, but the evidence
16 and testimony simply does not support the formation of any agreement directly between Plaintiffs and
17 Miramar/Orcana regarding the acquisition by Plaintiffs of any option or interest in, or possession of, the
18 Bruner Property. In contrast, the Court received uncontested evidence of a written sale agreement between
19 AIVN (Buyer) and Orcana Resources, Inc. and Miramar Gold Corporation (Sellers) involving the sale of the
20 Bruner Property to AIVN (the Miramar/AIVN Agreement). The Plaintiffs acknowledged the existence of
21 this agreement, and that the record owner of the Bruner Property is AIVN. The Court finds that the Bruner
22 Property was sold directly by Miramar/Orcana to AIVN, and that Plaintiffs did not acquire an option or
23 interest in the Bruner Property. Plaintiffs cannot assign to AIVN what Plaintiffs never had in the first place;
24 therefore, the Court also finds that Plaintiffs have failed to establish the existence of any agreement between
25 Plaintiffs and AIVN for the transfer of any rights, options or interests in the Bruner Property from Plaintiffs
26 to AIVN. AIVN is the owner of the Bruner Property, and entitled to possession of the Bruner Property free
27 from interference by the Plaintiffs.

28 The Plaintiffs must establish under NRS 14.015(2)(b) that this matter was not brought in bad faith

1 or for an improper motive. The Court makes no finding upon this statutory requirement.

2 NRS 14.015(2)(c) requires that Plaintiffs establish that they will be able to perform any conditions
3 precedent to the relief Plaintiffs seek relative to the "Bruner Property." Plaintiffs have failed to meet this
4 burden. Plaintiffs failed to first establish the existence of an agreement between Plaintiffs and Miramar, or
5 between Plaintiffs and AIVN, regarding the Bruner Property. As rescission is an equitable remedy which
6 seeks to unmake a contract, the existence of a contract is a condition precedent to the remedy of rescission.
7 In reality, the Plaintiffs seek to have this Court rescind or nullify the Miramar/AIVN Agreement as a remedy
8 for disputes between Plaintiffs and Defendants. Neither Miramar nor Orcana are parties to this proceeding,
9 which precludes this Court from effecting such a remedy as a matter of law. Furthermore, Plaintiffs are not
10 parties to the Miramar/AIVN Agreement. For these reasons, Plaintiffs have not satisfied NRS 14.015(2)(c),
11 and have also failed to show that they are likely to prevail in this action, as required by NRS 14.015(3)(a).

12 The Court also finds that Plaintiffs did not satisfy NRS 14.015(2)(d) which requires that they be
13 injured by any transfer of an interest in the Bruner Property before this action is concluded. Plaintiff, Robert
14 Carrington's testimony on this issue was indefinite and speculative.

15 In reference to NRS 14.015(3)(b), and for the reasons stated above, this Court further finds that
16 Plaintiffs did not establish that they have a fair chance of success on the merits in the action, that any injury
17 resulting from a transfer of an interest in the "Bruner Property" would be sufficiently serious that any hardship
18 on Plaintiffs would exceed the hardship on Defendants resulting from the notice of pendency, or that if
19 Plaintiffs were to prevail that they would be entitled to relief affecting the title or possession of the real
20 property.

21 **THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** that the Notice of Lis Pendens
22 filed and/or recorded by Plaintiffs in this matter be cancelled. This Order of cancellation has the same force
23 and effect as an expungement of the original notice.

24 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiffs, through counsel,
25 shall immediately identify in writing to counsel for Defendant, AIVN, all County Recorders where the Notice
26 of Lis Pendens has been recorded.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants promptly record a copy of this Order with the County recorder for each county in which Plaintiffs recorded the Notice of Lis Pendens.

DATED this 24 day of November, 2004.

JEROME M. F. G. G. G.
DISTRICT COURT JUDGE

EXHIBIT 1

Hale Lane Peek Dennison and Howard
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

1 1935
Richard L. Elmore, Esquire
2 Nevada Bar Number 1405
Brad M. Johnston, Esquire
3 Nevada Bar Number 8515
Hale Lane Peek Dennison and Howard
4 5441 Kietzke Lane, Second Floor
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5 Telephone: 775-327-3000
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6 Attorneys for Plaintiffs

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8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10 IN AND FOR WASHOE COUNTY

11 SAMUEL G. NUNNEMAKER, an individual,
and ROBERT G. CARRINGTON, an individual, Case No. CV04-00973
12 Plaintiffs, Dept. No. 3

13 vs.

14 AMERICAN INTERNATIONAL VENTURES,
15 INC., a Delaware Corporation, JACK
WAGENTI, an individual, and BARRY
16 DOWNS, an individual,

17 Defendants.

18
19 **NOTICE OF LIS PENDENS**

20 PLEASE TAKE NOTICE that an action has been commenced and is now pending in the
21 above-entitled court under the docket number set forth above by Plaintiffs against Defendants. The
22 action affects title to those patented and unpatented mining claims known as the Bruner property and
23 described in Schedule A attached hereto as **Exhibit "A"** (the "Property"). Through the present action,
24 Plaintiffs allege fraudulent inducement by the Defendants so that Plaintiffs transferred the Property to

25 ///

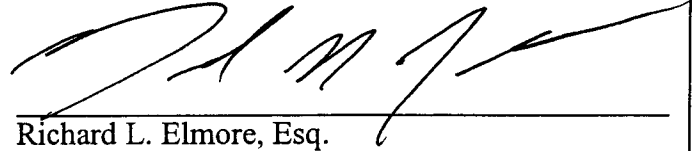
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1 Defendant American International Ventures, Inc ("AIVN"). Plaintiffs seek rescission of the agreement
2 that transferred the Property to AIVN.

3 DATED this 19th day of August, 2004.



Richard L. Elmore, Esq.
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Brad M. Johnston, Esq.
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(775) 327-3000; (775) 786-6179 (fax)
Attorneys for Plaintiff

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Hale Lane Peek Dennison and Howard
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

PROOF OF SERVICE

I, Gaylene Silva, declare:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Hale Lane Peek Dennison and Howard. My business address is 5441 Kietzke Lane, Second Floor, Reno, Nevada 89511. I am over the age of 18 years and not a party to this action.

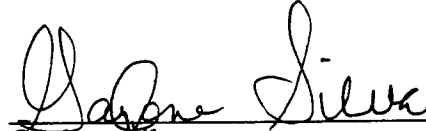
MAIL ONLY I am readily familiar with Hale Lane Peek Dennison and Howard's practice for collection and processing of its outgoing mail with the United States Postal Service. Such practice in the ordinary course of business provides for the deposit of all outgoing mail with the United States Postal Service on the same day it is collected and processed for mailing.

On August 19, 2004, I served the foregoing **NOTICE OF LIS PENDENS** by placing a true copy thereof in Hale Lane Peek Dennison and Howard's outgoing mail in a sealed envelope, addressed as follows:

Mark H. Gunderson, Esq.
Elaine S. Guenaga, Esq.
Mark H. Gunderson, Ltd.
A Professional Law Corporation
5345 Kietzke Lane, Suite 200
Reno, NV 89511

Ross E. de Lipkau, Esq.
Marshall Hill Cassas & de Lipkau
333 Holcomb Lane, Suite 300
Reno, Nevada 89501

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on August 19, 2004.



Gaylene Silva

LETTER OF AGREEMENT**SCHEDULE A**

List of Unpatented Mineral Claims held in the name of Miramar Gold Corporation and located in Township 14N and Range 37E in Nye County, Nevada

<u>Claim Name</u>	<u>Claim Number</u>	<u>NMC Number</u>	<u>Section</u>
Cottonball	1-2	132498 - 132499	24
	3-4	132500 - 132501	24, 25
	5-6	132502 - 132503	24
	7	132504	13, 24
	8-13	132505 - 132510	13
	14	132511	13, 24
	15-18	132512 - 132513	24
	17-18	132514 - 132515	24, 25
	19-20	132516 - 132517	24
	21	132518	13, 24

List of Patented mining claims and millsites in the name of Orcana Resources Inc. located in T14M, R37E, Services 13, 14, 23 and 24, Nye County, Nevada:

<u>Claim Name</u>	<u>Mineral Survey Number</u>	<u>Patent Number</u>
Paymaster	4301	616421
Paymaster Extension #1	4301	616421
Paymaster Extension	4301	616421
Defender	301	616421
Last Chance	4301	616421
Last Chance #1	4301	616421
Paymaster Annex	4301	616421
Wild Horse	4301	616421
Wild Horse #1	4301	616421
Wild Horse #2	4301	616421
Wild Horse #3	4301	616421
Big Henry	4301	616421
Friday	4301	616421
Little Jim	4301	616422
Sooy	4303	616422
Bruner Lode	4303	616422
Annex	4303	616422
Lucky Tiger	4303	616422
Aura	4303	616422
Silent Friend	4303	616422
Annex Extension (Fraction)	4303	616422

LETTER OF AGREEMENT

Climax	4302A	616422
July	4302A	756224
Black Mule	4302A	756224
Shale Lode	4302A	756224
Gold Knob	4302A	756224
July Millsite	4302B	756224
Black Mule Millsite	4302C	756224

List of Unpatented lode mining claims in the name of Orcana Resources Inc. located in T14N, R37E, Section 13, 14, 23, 24, 25 and in T14N, R38E, Sections 18, 19 and 20, in Nye County, Nevada.

<u>Claim Name</u>	<u>BLM Serial Number</u>	<u>County Book & Page</u>
Amethyst Extension	132489	256 37-86
Raymond	132490	256 32
Raymond #1	132491	256 33
Raymond #2	132492	256 29
Duke	132493	248 30
Duke #1	132494	256 31
Pbde	132495	256 34
Pbde #1	132496	256 35
Pbde #2	132497	256 36